

DECISION NO. VT81-3007

POWER EQUIPMENT OPERATORS:

(Cont'd):

Rollers:

Bennington County
 Caledonia County
 Rutland County
 Washington County
 Windham County
 Windsor County
 Remainder of County

Shovel:

Bennington County
 Chittenden, Essex,
 Franklin, Grand Isle and
 Washington Counties
 Lamoille County

Line Stripper:

Bennington County
 Backhoe/Loader Combination
 (Farm Type):

Rutland and Windsor
 Counties

Remainder of Counties

Specialized Earth/Rock

Baulers:

All Counties

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appn. Tr.
	H & W	Pensions	Vacation	
9.82	.55	.70	b	.05
8.20				
5.78			b	
7.80				
8.00				
7.76	.35	.50	b	.05
7.75				
8.73				
9.15	.85	1.00	b	.05
9.15			b	
7.50				
7.00				
6.95			b	.05
6.50				

FOOTNOTE:

a. Two (2) paid holidays: Memorial Day & Independence Day, providing the employee has been employed the schedule workday prior to the holiday and the schedule workday after the holiday.

b. Nine (9) paid holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, Washington's Birthday, Columbus Day and Veteran's Day, provided the employee has been employed at least 7 days or more prior to the holiday and has worked the day before and the day after the holiday.

*Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

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Part VI

Architectural and Transportation Barriers Compliance Board

**Minimum Guidelines and Requirements
for Accessible Design; Final Rule**

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1190

Minimum Guidelines and Requirements for Accessible Design

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board hereby issues its minimum guidelines and requirements (guidelines and requirements) for standards for accessibility and usability of Federal and federally funded buildings and facilities by physically handicapped persons. These guidelines and requirements are issued pursuant to the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (the 1978 Act), amending the Rehabilitation Act of 1973, Pub. L. 93-112. The guidelines and requirements provide a basis for the issuance of consistent and improved accessibility and usability standards issued by the four Federal standard setting agencies, the General Services Administration, Department of Housing and Urban Development, Department of Defense and United States Postal Service, under the Architectural Barriers Act of 1968, as amended.

EFFECTIVE DATE: January 6, 1981.

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SUPPLEMENTARY INFORMATION:

A. Background

Section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. 792, established the Architectural and Transportation Barriers Compliance Board (ATBCB or Board) as an independent Federal agency to insure compliance with standards issued under the Architectural Barriers Act of 1968 (Pub. L. 90-480) (42 U.S.C. 4151 *et seq.*), as amended. The Board consists of eleven Federal agency members plus eleven members appointed by the President from the general public.¹

¹ The agency members are the heads or their designees (Executive Level IV or above) of the Departments of Education; Transportation; Health and Human Services; Housing and Urban

Congress found that compliance with the Architectural Barriers Act had been spotty and that enforcement of accessibility standards² was necessary to fulfill the Congressional commitment to afford handicapped individuals the opportunity to move freely and integrate themselves in society. See H.R. Rep. No. 244, 93d Cong., 1st Sess. 23 (1973); S. Rep. No. 318, 93d Cong., 1st Sess. 49 (1973).

Congress expanded the responsibilities of the ATBCB in the 1978 Act. Section 118 of the 1978 Act, amending the Rehabilitation Act of 1973 ((29 U.S.C. 792), sec. 502(b)(7)), requires the Architectural and Transportation Barriers Compliance Board (ATBCB) "to establish minimum guidelines and requirements for standards issued pursuant to the * * * Architectural Barriers Act of 1968." Pub. L. 90-480 as amended (42 U.S.C. 4151 *et seq.*). Based on the minimum guidelines and requirements issued by the ATBCB, four Federal agencies—Department of Defense, General Services Administration, Department of Housing and Urban Development, and the United States Postal Service—are to prescribe standards for the design, construction, and alteration of certain Federal and federally-assisted buildings "to insure, whenever possible, that physically handicapped persons will have ready access to, and use of, such buildings." 42 U.S.C. 4152-4154a. Existing access standards³ issued by those agencies will be revised to conform to the guidelines and requirements.

Congress recognized the need for consistent application of the Architectural Barriers Act throughout the nation. The Board will exercise strong leadership, provide technical assistance, and work with the agencies setting standards to insure they follow the minimum guidelines and requirements in revising their standards. See S. Rep. No. 890, 95th Cong., 2d Sess. 19 (1978); H.R. Rep. No. 1149, 95th Cong.,

Development; Labor; Interior; Justice; Defense; General Services Administration; Veterans Administration; United States Postal Service. The Act requires at least five of the members from the general public to be physically handicapped.

² To implement the Board's enforcement mission as set forth in 29 U.S.C. 792(b)(1), through administrative procedures set forth in 36 CFR Part 1150, the ATBCB recently revised its original enforcement rules, 41 FR 55441 (1976) to enhance their readability, reflect the experiences of several years practice and to reflect the amendments in the Rehabilitation Act made by the 1978 Act, 45 FR 78472 (1980).

³ GSA: 41 CFR 101-19.6, effective September 2, 1969, revised October 14, 1980 (45 FR 67664); HUD: 24 CFR Part 40, effective September 2, 1969; DOD: DOD 4279.1-M "Construction Criteria," June 1, 1978, paragraph 5-6; USPS: Postal Service Contracting Manual, Publication 41, § 18-518.4, 39 CFR 601.100, as amended by handbook RE-4, November 1979.

2d Sess. (1978); Report by the Comptroller General, *Making Public Buildings Accessible to the Handicapped: More Can Be Done*, B-182030 (1980).

B. Problem of Inaccessibility

The physically handicapped are citizens of this country—just as others of us are; they pay taxes and contribute to the economy of the country—just as others of us do; they deserve access to their public buildings on an equal basis with the rest of us.

These were the words Senator Edward Bartlett, the Senate sponsor of the bill which became the Architectural Barriers Act, spoke immediately before the passage of the Act. 113 Cong. Rec. 24133 (1968). The Act demonstrates a unanimous Congressional purpose to insure that "certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped." Title of Pub. L. 90-480.

In enacting this legislation, Congress intended to afford physically handicapped persons "every opportunity to obtain gainful employment and otherwise enter into the mainstream of American life." Congress found that the Federal government had "literally locked out millions of its citizens from the public buildings which it has * * * financed by not requiring that these buildings be designed and constructed so that people with physical impairments could readily enter and use the facilities of such buildings." S. Rep. No. 538, 90th Cong., 1st Sess. 3 (1967); see also H.R. Rep. No. 1532, 90th Cong., 2d Sess. 2, 3, and 4 (1968).

In a 1975 report examining the implementation of the Architectural Barriers Act the Comptroller General observed:

Accessibility of public buildings is essential if the handicapped are to have the same rights and opportunities as the able-bodied in obtaining government services and employment outside their homes.

Report by the Comptroller General, *Further Action Needed to Make All Public Buildings Accessible to the Physically Handicapped*, B-182030 (1975).

The history of the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978 reflects a continuing congressional awareness of the problems of architectural barriers.

While a 3- to 6-inch step is no barrier to the vast majority of the population of the United States, it is an insurmountable barrier to someone in a wheelchair. The reality of barriers may only be a passing thing to the able-bodied individual, but it is a constant

concern and frustration to the handicapped individual.

S. Rep. No. 890, 95th Cong., 2d Sess. 18 (1978).

The ATBCB views handicapped persons as first class citizens. Disabled persons should not be treated, as one witness testified when the Architectural Barriers Act was pending, as "back door citizens, persons dependent on others to do every day simple things." Hearings on S. 222 Before the Subcomm. on Public Buildings and Grounds of the Senate Committee on Public Works, 90th Cong., 1st Sess. 71 (1967). See also Goffman, *Stigma: Notes on the Management of Spoiled Identity* (1963).

The ATBCB itself is also quite knowledgeable in the problems of inaccessibility. Since the Board's formalized complaint system began in fiscal year 1977, the ATBCB has received hundreds of complaints of inaccessible sites. In 1978-1979, the Board conducted 1000 field reviews, surveying approximately 100 buildings in each of ten cities across the country. In its field reviews and complaint processing, the ATBCB has seen the spectrum of access problems identified in Federal and federally-funded projects. This includes a lack of parking for handicapped persons, inaccessible bathrooms, inaccessible entrances, elevator and other controls that were too high, a lack of tactile identification for blind and visually-impaired persons and a lack of warning systems for deaf and hearing-impaired persons. The ATBCB is aware that the problem of inaccessible buildings and facilities is national in scope.

C. Rulemaking History

On February 22, 1980, the Board published in the *Federal Register* at 45 FR 12167, a Notice of Intent to Issue Proposed Rules. The Notice of Intent to Issue Proposed Rules recited the Board's intent to compile information regarding design specifications and scoping requirements for the proposed minimum guidelines and requirements on accessibility. Comments were solicited for 45 days on the key issues anticipated to be addressed in the Notice of Proposed Rulemaking. One hundred seventeen comments from a cross-section of the public were received. Disabled persons and their advocacy organizations, universities, building industry organizations, and Federal and State agencies submitted comments.

Based on the comments received, Board discussions, and other information available, the Board published on August 18, 1980, in the *Federal Register*, 45 FR 55010, a Notice of Proposed Rulemaking (NPRM). The

NPRM contained the proposed rule, a preamble, and draft regulatory analysis. Public comment on the proposed rule was invited for sixty days. Several issues, relating both to scope and technical matters, were highlighted for public comment.

The ATBCB forwarded nearly 10,000 copies of the NPRM to persons who requested copies or were on the ATBCB mailing list. The ATBCB received a total of 281 comments prior to the closure of the docket on October 17, 1980. All comments postmarked on or before that date were considered. No time extensions were granted. Comments received are available for inspection at 330 C Street, S.W., Room 1014, Washington, D.C. 20202, from 9:00 a.m. to 5:30 p.m., Monday through Friday.

D. Review by Office of Legal Counsel

At its December 12, 1980, meeting the ATBCB decided to take the extraordinary action of submitting its draft final rule to the Office of Legal Counsel (OLC), U.S. Department of Justice, for review prior to final consideration by the Board. The Office of Legal Counsel, in an opinion of December 30, 1980, which is included in the rulemaking docket, advised the Board that the draft final rule, with its detailed provisions, constituted "minimum guidelines and requirements" within the meaning of 29 U.S.C. 792(b)(7).

The ATBCB is within its discretion in establishing specific requirements, including each of certain items, for standards to achieve ready access and use. The Board's authority relating to minimum guidelines and requirements does not extend to regulations governing waivers and modifications as previously proposed in Subpart B. The ATBCB's authority over waivers and modifications is in the enforcement area. 29 U.S.C. 792(b)(1), 36 CFR Part 1150.

OLC considered whether the provisions relating to additions and alterations exceeded the applicable requirements of 42 U.S.C. 4155. OLC concluded that it was lawful to provide that a space be made accessible when alterations of elements within a space together constitute an alteration of the space itself. OLC also recognized the validity of the Board's provisions in the NPRM regarding vertical access. Under the NPRM an alteration of stairs and escalators was treated as an alteration of the building's system for providing vertical access. Nonetheless, as a matter of policy, the Board modified this provision to require accessible vertical access only in more limited circumstances. See discussion below in F. Section-by-Section Analysis. The

provisions with respect to additions, 36 CFR 1190.32, were viewed as reasonably treated as new construction, and also found to be legally sufficient.

The Office of Legal Counsel reviewed carefully the provisions relating to alterations, 36 CFR 1190.33(b), which contain the "50% rule" requiring additional work where alterations within a 12 month period exceed 50% of the full and fair cash value. The Office of Legal Counsel felt it was within the ATBCB's mandate under the remedial statute it was implementing to require an accessible route and entrance when a building is being substantially altered. The Office of Legal Counsel did feel the Board proposal to require accessible toilet rooms on each floor in every case in which the alterations cost 50% of the facility's full and fair cash value was overly broad. The rule has been revised.

The Office of Legal Counsel sustained the ATBCB views on the scope of applicability of the Architectural Barriers Act with respect to leased buildings. The statute must be read to include leased buildings within the accessibility requirements of the Act, 42 U.S.C. 4155. This extends to extensions as well as renewals of leases. Buildings under Federal lease, including renewals and extensions, must be accessible.

E. Overview of the Regulation

These minimum guidelines and requirements, the first to be issued by the ATBCB, contain both technical and scoping provisions for the generic (common) elements and features of buildings and facilities. These are the basis for the accessibility and usability standards enforced under Section 502 of the Rehabilitation Act. This will provide a Government-wide basis for a common understanding of accessibility.

The ATBCB guidelines and requirements consist of five major components. Subpart A, General, sets out the purpose, applicability, definitions, relationship of the guidelines and requirements to the Architectural Barriers Act standards, other uses, and effect of State or local law on the guidelines and requirements. Subpart B has been reserved for reasons elaborated below. Other departures from the guidelines and requirements are permitted under specific design exceptions. Subpart C enumerates the scoping and technical provisions applicable to new construction, additions, alterations, and leased buildings. Subpart D contains the technical provisions. Subpart E is reserved for special use provisions applicable to elements or types of buildings, e.g., library stacks, hospitals,

penal institutions, and residential structures.

Throughout the rulemaking process, the ATBCB considered the technical specifications in the proposed and final 1980 revision to the American National Standard Institute (ANSI) standard. ANSI is a private institute in New York City, not connected with the Federal government, that provides a mechanism for creating voluntary consensus standards. In May 1980, subsequent to the issuance of the ATBCB Notice of Intent, the American National Standard Institute published its technical accessibility standard. The 1980 ANSI standard states that scoping provisions are to be developed by administering agencies. ANSI A.117.1 (1980) §§ 2.1, 2.2. The ATBCB believes that a single document including both technical and scoping provisions is most usable in achieving accessibility.

At the beginning of the rulemaking process, the Board was presented with the issue of determining how to utilize the expertise of ANSI while protecting the public interest and ensuring adequate administration and enforcement of the Architectural Barriers Act.

In general, the system of voluntary standards tends to the development of commercially acceptable standards. However, that process is less than ideal from a regulatory perspective. Hamilton, *The Role of Nongovernmental Standards in the Development of Mandatory Federal Standards Affecting Safety or Health* ("Hamilton"), 56 Tex. L. Rev. 1446-1447 (1978). The ANSI voluntary standard consensus process is not an open public dialogue process as required by the Administrative Procedure Act, 5 U.S.C. 553. The views of the general public are not solicited and thus not considered. The ATBCB process for developing guidelines and requirements for standards applicable to Federal procurement and grants is consistent with OMB Circular A-119 on the use of voluntary standards. The ATBCB is voluntarily taking cognizance of that circular. However, the voluntary standards techniques has come under Congressional criticism. *Voluntary Industrial Standards in the United States: Report to the Subcommittee on Science, Research and Development of the House Committee on Science and Technology*, 93d Cong., 2d Sess. 88-89 (1974). See also S.Rep. No. 91-1282, 91st Cong., 2d Sess. 6 (1970); H.R. No. 1291, 91st Cong., 2d Sess. 181 (1970).

The ATBCB, while wary of the pitfalls of voluntary consensus standards, is mindful of the significant achievements with respect to ANSI A117.1 (1980). For that reason, the ATBCB, quite properly,

considered that work as most significant in shaping the particular provisions and weighed it carefully. See Hamilton, 56 Tex. L. Rev. at 1448. The ATBCB, consistent with its recognition of the practical need for a single document containing both scoping and technical provisions, also developed scoping sections as ANSI suggested. The ATBCB also recognized the significant technical contribution made by the ANSI Standard and has adopted many of its provisions.

F. Section-by-Section Analysis/Major Comments

This section provides a brief review of the comments and changes from the NPRM to the final rule. A final Regulatory Analysis has been prepared which contains an in-depth discussion of the alternatives and issues considered by the ATBCB.

Subpart A contains the General Provisions. The ATBCB has determined that its authority from the 1978 Act is to issue a binding, legislative rule which insures ready access and use. See *Batterton v. Frances*, 432 U.S. 416 (1977), *American Telephone and Telegraph Co. v. United States*, 299 U.S. 232 (1936); *National Nutritional Foods Association v. Weinberger*, 512 F.2d 888 (2d Cir. 1975). Also see the Regulatory Analysis containing Issue Papers of December 2, 1980, and April 4, 1980.

In this context 36 CFR 1190.1, Purpose, has remained unchanged.

The dates previously mentioned in proposed 36 CFR 1190.2(b)(2)(ii) (A) and (B) have been deleted to avoid any confusion over the applicability of the guidelines and requirements. The application of the minimum guidelines and requirements is prospective not retroactive in nature. A building designed, constructed, altered or leased after the effective date of an accessibility standard issued under the Architectural Barriers Act must comply with that standard. Utilizing the process set forth in proposed 36 CFR Part 1150, the ATBCB enforces those standards in the buildings and facilities required to comply with the Architectural Barriers Act. See 36 CFR 1150.2(c).

A few of the federal members wanted the ATBCB to clarify that certain categories of acquired buildings were not covered by the Architectural Barriers Act. While the ATBCB has not reviewed in detail the particular program statutes, it recognizes that, as a general rule, buildings purchased or acquired directly by the Government without construction or alteration are not subject to the Architectural Barriers Act. See Regulatory Analysis containing Issue Paper No. 1, April 4, 1980.

The definition section, proposed 36 CFR 1190.3, was the focus of several comments. The definition of entrance has been added. The new definition clarifies that the entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware on the entry door(s) or gate(s). In some facilities the spaces that house the major activities for which the building or facility is intended, such as office space or transit loading areas, are located above or below ground, with access from the street level to an underground or raised level or levels via escalators or stairs. In those instances, the vertical access is considered an integral part of the entrance, and an elevator, ramp, or lift must be provided to the first of those levels in order for the entrance to comply with this section. With respect to an underground shopping/office area, the entrance platform is the interior platform from which doors lead to offices, stores, or other facilities. For purposes of these guidelines and requirements, the entrance to an underground transit facility includes the approach walk, the vertical access leading from the exterior to the interior platform or platforms, the fare gate or other point of controlled access, and all intervening spaces. The term "platform" is used here in the generic sense of a flat area or landing; it is not limited to the area between or alongside the tracks of a transit station from which transit cars are entered.

The definitions of "modification" and "waiver" have been removed as a result of the Office of Legal Counsel's opinion on Subpart B. Commenters thought the terms "normal maintenance" and "extraordinary repair" should be defined. The ATBCB looks to the standard-setting agencies to more precisely define these terms in the standards to be issued by the agencies under the Architectural Barriers Act, Pub. L. 90-480, as amended. The definition of "Disability" as contained in § 1190.3 is consistent with that utilized under Section 504 of the Rehabilitation Act. The definition of "full and fair cash value" has been changed to include three methods to determine the value of a building: the assessed value as equalized at one hundred percent (100%) valuation; the replacement cost; or the fair market value. The value of a building will be calculated for the estimated date that the work will begin.

Section 1190.4, Issuance of Architectural Barriers Act standards by standard-setting agencies, has been revised slightly from the provisions in

the NPRM. Comments were raised regarding the authority of the Board to enforce its own guidelines and requirements in the event the agencies setting standards under the Architectural Barriers Act fail to issue conforming standards. Proposed 36 CFR 1190.4(d). The Board is hopeful that each agency will issue conforming standards. 36 CFR 1190.4(d). The ATBCB expects that the agencies will act expeditiously, and anticipates that the standards will be published within one year of the effective date of the ATBCB minimum guidelines and requirements.

Section 1190.5, Guidelines: Other uses, is unchanged from the original proposal. The ATBCB provision allowing use of the minimum guidelines and requirements by other governmental and nongovernmental entities does not contradict the mandate of the Architectural Barriers Act standards.

Section 1190.6, Interpretation of guidelines, attracted only minor comment. It is unchanged and contains standard rules of interpretation.

Section 1190.7, Effect of State or local law, notes that the obligation to comply with this part is not affected by any State or local law. The question of the interrelationship of the Federal and State/local standards is one resolved on the basis of principles of preemption.

Section 1190.8, Site conditions, providing that site conditions were not to be used as a justification for noncompliance, was of concern to some commenters. Due to the difficult nature of this subject, it has been reserved for future use. The ATBCB recognizes that certain extreme site and/or climatic conditions, such as permafrost, would justify a waiver or modification by the appropriate head of the agency setting the standard.

Section 1190.9, Severability, is retained unchanged. No comments were received.

Subpart B—Waivers and Modifications: Processed departures, attracted considerable and divergent comments. In view of the nature of the comments on proposed 36 CFR 1190.21, 1190.22, and 1190.23, these sections are grouped together. Several commenters thought the provisions were far too liberal and would lead to excessive relaxation of the standards; others, however, thought the provisions were too restrictive of the rights of agencies setting standards under the Architectural Barriers Act. Some of the Federal agencies also thought those provisions were beyond the scope of the ATBCB's authority in these guidelines and requirements. To resolve the controversy, the Department of Justice, Office of Legal Counsel (OLC), was

requested by the Board to review Subpart B. The OLC believes that the Board is not authorized to promulgate regulations in this rule governing waivers and modifications. The ATBCB, as a result, has removed all reference to the Subpart B guidelines and requirements on waivers and modifications and has reserved "Subpart B" for future use. To ensure that all waivers and modifications are based upon findings of fact and are not inconsistent with the provisions of the Architectural Barriers Act and Section 502 of the Rehabilitation Act, the ATBCB will supervise the agencies' determinations of waivers and modifications on a case by case basis through the use of the Board's recently revised enforcement procedures in 36 CFR Part 1150, 45 FR 78472. See Section 502 of the Rehabilitation Act, 29 U.S.C. 792(b)(1). Under these provisions, the Executive Director is free to institute compliance proceedings against any facility where the Executive Director claims that a waiver or modification was granted improperly.

Subpart C—Scope, attracted considerable comment concerning the nature of the guidelines and requirements. Some agencies expressed the view that the guidelines and requirements were all-inclusive in both their technical and scoping provisions. However, it is well established that guidelines may be extremely detailed. See *FMC Corp. v. Train*, 539 F.2d 973 (4th Cir. 1976). Moreover, the scoping provisions should be viewed as minimum guidelines and requirements. Certain minimum items must be provided for a building to be accessible. The quantification of these items is thus appropriate. See *FMC Corp. v. Train*. This approach was found by OLC to be within the Board's statutory authority.

In response to the public comment, however, the ATBCB did reconsider its policy on particular items affecting the extent to which a new building or a facility may be required to be accessible. Several changes were incorporated into 36 CFR 1190.31, Accessible buildings and facilities: New Construction.

In 36 CFR 1190.31(b), Parking and passenger loading zones, the questions considered by the Board included whether parking for disabled persons should be required and what number of parking spaces should be specified by the guidelines and requirements. The ATBCB decided to retain the proposed language requiring that if any parking is provided, parking must be provided for disabled persons. However, compliance with this section is not required if the

only parking provided is for official vehicles owned or leased by the government.

The ATBCB also considered carefully the provisions in 36 CFR 1190.31(f), Elevators, especially in terms of its cost implications. The ATBCB has determined that few buildings will be constructed by or on behalf of the United States which will not contain an elevator. The agencies setting standards under the Architectural Barriers Act do not anticipate that this will be a problem. The provisions in the NPRM have been retained.

The provisions relating to the number of entrances, 36 CFR 1190.31(h), attracted considerable comment. The ATBCB considered such factors as the location, number, and costs of entrances. The ATBCB decided that, "At least one entrance to a building or facility shall comply with § 1190.120, Entrances. When a building or facility has entrances which normally serve any of the following functions: transportation facilities, passenger loading zones, parking facilities, taxi stands, public streets and sidewalks, accessible interior vertical access, then at least one of the entrances serving each such function shall comply with § 1190.120, Entrances. When a building or facility has entrances on more than one side then at least one entrance on each side shall comply with § 1190.120, Entrances." The ATBCB recognizes that certain extreme topographical conditions may preclude accessibility of a particular entrance.

The ATBCB also weighed carefully the highlighted questions relating to doors. The ATBCB decided that the scoping provisions relating to doors, proposed 36 CFR 1190.31(i), should be revised to provide, in effect, that at each accessible entrance to a building or facility there must be at least one accessible door. Similarly, there must be at least one accessible door to each accessible space within a building or facility. However, each door that is required by § 1190.50(h), Egress, and each door that is an element of an accessible route shall comply with § 1190.130, Doors. The NPRM had required all doors to be accessible.

The ATBCB considered the question of whether the Board had sufficient research on accessible windows to justify the scoping provisions of § 1190.31(j) in the NPRM. The Board concluded it did not; accordingly the provision has been reserved.

The NPRM highlighted questions concerning the requirements on the location and number of accessible toilet and bathing fixtures. The ATBCB decided to revise proposed 36 CFR

1190.31(k) to provide that each toilet and bathing facility must provide at least one accessible fixture and accessory of each type provided. The Board deleted the provision which required 2% of all fixtures and accessories to be accessible in multiple fixture facilities.

The ATBCB has decided to revise proposed 36 CFR 1190.31(l), Drinking Fountains and Water Coolers, to provide that if only one drinking fountain or water cooler is provided per floor it shall be a two-level fountain or cooler and the lower level must comply with 36 CFR 1190.180. If more than one is provided per floor then approximately 50% (fifty percent) of the drinking fountains and water coolers provided shall comply with 36 CFR 1190.180; the others shall be of the standard height. Commenters pointed out that some people with orthopedic problems cannot bend to use low fountains and suggested that there was a need to require fountains and coolers at two different heights.

Public comments on the proposal relating to the provisions in proposed 36 CFR 1190.31(n), Alarms, were mixed. Certain groups thought the flashing exit signs were acceptable while others did not. The ATBCB has decided to retain the proposed language as it benefits the largest cross-section of the population, including handicapped and able-bodied persons, while not increasing the cost of an alarm system significantly. The term "alarm systems" has been inserted to make this paragraph consistent with § 1190.180, Alarms. The ATBCB also recognizes the need for additional research in this area.

Tactile warnings, 36 CFR 1190.31(o), were carefully considered. Comments received on the NPRM indicated that there continues to be confusion in the use of tactile warnings and informational cues. Until the Board obtains additional research and information on tactile warnings, the Board decided to require tactile warnings only on the hardware of all doors that lead to hazardous areas. Tactile warnings are prohibited on emergency exit doors. The Board decided to reserve the technical section, tactile warnings, 36 CFR 1190.190, until additional research is obtained and therefore has eliminated reference to these provisions in paragraph 1190.31(o).

The ATBCB also considered the highlighted issue of volume controls for telephones in proposed 36 CFR 1190.31(q). However, the Board strongly encourages installation of TDDs, especially in buildings visited by large numbers of people. Several issues relating to telecommunication devices for the deaf (TDD) were also highlighted

in the NPRM. A telecommunications device for deaf persons (TDD) is a teletypewriter, or similar keyboard device, attached to a standard telephone by means of an acoustical coupler, and by which two persons can communicate over regular telephone lines by typing their conversation. Although TDDs received strong support from deaf persons and their advocacy organizations, the ATBCB has decided to defer including a requirement for TDDs in Federal and federally-funded buildings until additional information is obtained. The ATBCB has also decided to adopt scoping requirements similar to those in the ANSI standard for volume controls; that is, at least one telephone shall be equipped with a volume control if banks of telephones are provided.

NPRM 36 CFR 1190.31(r), Seating, tables and work surfaces, requested comment on the adequacy of the requirement that 5% of the total fixed or built-in seating tables and work surfaces be required to be accessible. From the limited responses provided on this issue, the ATBCB concluded that its proposal was reasonable.

The question of numbers was also raised in connection with 36 CFR 1190.31(s), Assembly areas. The number of viewing areas in the proposed rule has been retained in the final.

In 36 CFR 1190.31(t), Storage, the Board questioned whether all storage areas should be required to be accessible. The ATBCB concluded that if storage facilities are intended to be provided in accessible space for occupant use, only one storage facility of each type provided must be accessible. Additional storage space which is not accessible is, of course, permissible.

Under 36 CFR 1190.32, Additions, additions are generally to be treated as new construction. This approach was supported by the OLC opinion. The ATBCB had retained the proposed language in 36 CFR 1190.32 (a) and (b) but revised proposed 36 CFR 1190.32 (c) and (d). This change requires that at least one accessible entrance, one accessible route, and one accessible toilet and bathing facility be provided in the existing building if these elements are not provided in the addition. This section, for example, allows a designer the choice of providing an accessible entrance in the new addition or utilizing an existing accessible entrance in the existing building. The designer may also find it practical to create an accessible route and an accessible entrance in the existing building as a more economical solution to the usability and accessibility issue if no entrances are planned in the new addition. If

elements, spaces, or common areas are located in the existing building and they are not provided in the addition, consideration should be given to making those elements, spaces, and common areas accessible in the existing building. If the elements in 36 CFR 1190.32(a)(b)(c) were not provided, the addition would be extremely difficult or impossible for a disabled person to use. The revision provides for less access than in the NPRM. However, it effects a balancing of interests, as the comments warranted, to achieve access and use at a reasonable cost.

Proposed 36 CFR 1190.33, Accessible buildings and facilities: Alterations, attracted wide comment. A number of Federal agencies strongly opposed, under any circumstances, the requirement to make more than the altered area accessible.

The NPRM highlighted the issue of where a means of vertical access must be provided. Proposed 36 CFR 1190.33(a)(2). Some comments questioned the ATBCB's authority and policy on this matter. The ATBCB's review of the history of the Architectural Barriers Act demonstrated that it is within the Board's discretion to require that vertical access be provided in the circumstances specified. See Regulatory Analysis containing Issue Paper of December 8, 1980. The language in the NPRM was modified to require the following: "If power-driven vertical access equipment (e.g., escalators) is planned or installed where none existed previously, or if new stairs (other than stairs installed to meet emergency exit requirements) requiring major structural changes are planned or installed where none existed previously, then a means of vertical access shall be provided that complies with § 1190.70 Ramps and curb ramps, § 1190.100, Elevators, or § 1190.110, Platform lifts. It is consistent with the letter and spirit of the Architectural Barriers Act that accessibility shall be incorporated as each part of the facility is altered so that eventually the entire facility will be accessible. The OLC opinion supported this approach.

Under 36 CFR 1190.33(a)(3), formerly (a)(4), the words "portion of" when referring to "space" have been deleted. Commenters noted the difficulty in defining what "portion of" meant.

The NPRM 36 CFR 1190.33 (b) and (c) would have required basic accessibility throughout the building if the alteration involved more than 50% of the value and floor space. After considering the public comment, the Board has revised its rule to eliminate the phasing requirement proposed in 36 CFR 1190.33(a)(3) and to substitute a twelve (12) month time limit

for invocation of the 50% criteria, 36 CFR 1190.33(b). The phasing requirement, commenters noted, would be extremely difficult to monitor. The gross square footage criteria was eliminated because it appears to be misleading. 36 CFR 1190.33(b) requires that certain elements and spaces must be accessible in order to provide the most basic access to and use of a building and that these elements and spaces must be designed and altered to comply with the guidelines and requirements. Without the elements and spaces required by 36 CFR 1190.33(b) (1) (2) and (3)—that is, at least one accessible route, at least one accessible entrance, and at least one accessible toilet facility on each substantially altered floor with a minimum of one accessible toilet facility in each altered building—it would be extremely difficult or impossible for a handicapped person to use a facility even if the facility were otherwise accessible. The number of toilet rooms required to be accessible if no alterations were planned on existing toilet rooms has been decreased from one per floor, altered or not, consistent with the OLC opinion. Moreover, consistent with commenters' suggestion to ease the financial burden of doing the work required by 36 CFR 1190.33(b), exceptions have been added. If the cost of the elements and spaces required by 36 CFR 1190.33(b) exceeds 15% of the total cost of all other alterations, then the agency may elect to implement the required improvements within a five year period and thus reduce the financial impact of a previously unscheduled alteration. Consideration should also be given to providing the accessible elements or spaces enumerated in § 1190.33(b)(6). The ATBCB has excepted from the 50% rule alterations which are limited solely to the electrical, mechanical, or plumbing system and which do not involve the alteration of elements of spaces required to be accessible under Part 1190. This change is consistent with the OLC opinion.

The subject of the applicability of the Architectural Barriers Act to leased buildings, 36 CFR 1190.34, was considered fully. The ATBCB recognizes that Congress amended the Architectural Barriers Act in 1976, Pub. L. 94-541, to cover all buildings leased by the Federal government. Leased buildings are required to be accessible at the time the lease is entered into, rather than at a later time when such structures may be altered. The 1976 amendments also extended coverage of the Architectural Barriers Act to unilateral "extensions" of leases as well

as bilateral "renewals" of leases. See ATBCB Minutes of Meeting October 31, 1980. The provisions concerning leases were found by OLC to be within the Board's statutory authority.

The ATBCB notes that the language "whenever possible" in the Architectural Barriers Act is a recognition that it may not, under necessarily limited circumstances, be possible to lease accessible space. This may also be true with respect to leases in the more remote areas where accessible space may not be available, or where space is leased for officials servicing natural or human made disasters, e.g., Three Mile Island. The Board, for this reason, has added the following exception to the full accessibility requirements for leased space: "If no space complying with (a) or (b) is available, space as available may be leased provided: (1) The leasing authority certifies that space is unavailable due to the remoteness of the area or that the lease is necessary for officials servicing natural or human-made disasters; and (2) the ATBCB is provided a listing of instances in which this exception is applied, as part of the semi-annual report to Congress." If other deviations from the requirements of § 1190.34 are necessary, these will be made through the waiver or modification process.

Subpart D attracted generally favorable comments.

36 CFR 1190.40, Human data, sets forth basic requirements, e.g., moving wheelchair clearances and reach limitations. Generally the comments were favorable. The section remains as proposed in the NPRM. However, the language for minimum clear width for a single wheelchair has been clarified to provide for a 3'-0" (915mm) except that the clear width may be reduced to 2'-8" (815mm) for a distance not to exceed 2'-0" (610mm) in length at points such as doorways. Other paragraphs have been renumbered.

The provisions in 36 CFR 1190.50, Walks, floors, and accessible routes, are the same as in the NPRM. In general, comments received were favorable to this section. The word "nominal" has been inserted in proposed 36 CFR 1190.1150(c)(1) and (e)(1) to accommodate the dimensions needed for door stops. No substantive change in the requirement has been made.

The technical provisions relating to parking, proposed 36 CFR 1190.60, Parking and passenger loading zones, remain unchanged except that the section has been revised to include specifications for accessible spaces for side lift vans. Accessible spaces for side

lift vans may be used to meet the requirements of 36 CFR 1190.31(b).

The NPRM provisions relating to ramps and curb ramps, proposed 36 CFR 1190.70, were the focus of two decisions. It was decided to retain the language in the NPRM which does not require a standard or uniform location of curb ramps. The ATBCB will seek to work with the Federal Highway Administration to develop uniform requirements for the location of curb ramps which intersect vehicular ways. It was also decided to revise proposed 36 CFR 1190.70(c) to require curb ramps of a width of 3'-0" instead of 4'-0". This was based on the public comment to support 3'-0" and lack of any research data to support a width beyond 3'-0". For clarification, the chart on ramp slope has been revised to make it consistent with the text.

36 CFR 1190.80, Stairs, has been retained as proposed. Some questions were received on the use of open risers and the dimensions of stair treads, but no authority or research was cited by commenters. The ATBCB rule is similar to the ANSI A117.1 (1980) provision except that ANSI allows open risers.

The provisions relating to handrails, proposed 36 CFR 1190.90, have been revised based on the work of the American Society for Testing and Materials. A width measurement instead of a perimeter formula is now provided. An additional paragraph, which commenters noted was in ANSI A117.1 (1980) but not in the NPRM, has been added. A handrail or any wall rail or other surface adjacent to it shall be free of any sharp or abrasive elements.

The provisions applicable to elevators, proposed 36 CFR 1190.100, were the subject of considerable comment, particularly the technical and cost implications of the 4'-0" control panel mounting height. The ATBCB retained the NPRM language to retain 4'-0" for the maximum height and 2'-11" minimum. This is consistent with the Human Data, 36 CFR 1190.40. However, the ATBCB will allow floor buttons to be mounted up to 4'-8" if the 4'-0" height imposes a substantial increase in the cost of the elevator.

A typographical error appearing in the NPRM Figure 10.1 was corrected from four seconds to five seconds. The door widths of elevator cars has been revised from 2'-8" to 3'-0". The ATBCB recognizes that this may be inconsistent with 36 CFR 1190.40 Human data; however, the wider width is necessary because these are moving doors. A provision, which commenters suggested and is based upon ANSI A117.1 (1980), has been added to allow a maximum clearance of

1 1/4 inches between the elevator car and floor.

Platform lifts, proposed 36 CFR 1190.110, remains as proposed in the NPRM. Comments were relatively few and noncritical.

The comments concerning entrances were directed at the scoping requirements of 36 CFR 1190.31(h) rather than the technical requirements of proposed 36 CFR 1190.120. This section remains essentially unchanged; however, the definition of "entrance" has been added to § 1190.3, Definitions.

The provisions concerning doors were also the subject of several decisions. Under revised 36 CFR 1190.130(a)(3), if accessible doors are near revolving doors or turnstiles, the accessible doors shall be subject to the same use patterns as the revolving door or turnstile.

In revised 36 CFR 1190.130(c)(i), the ATBCB decided the latch side clearance requirement should be 1'6", through 2'0" is recommended. In proposed 36 CFR 1190.130(c)(2) Figure 2 was selected, consistent with the Human data. The NPRM had proposed alternative figures.

The ATBCB decided to retain the provision in proposed 36 CFR 1190.130(c)(4) relating to doors to acute care patient rooms.

In response to public comment, the ATBCB decided to make an exception to 36 CFR 1190.130(f) to allow hardware used to secure the inactive leaf of a double leaf door without a center mullion to be mounted at any height (as opposed to the 4'0" (1,220 mm) general rule).

The ATBCB, on an issue highlighted in the NPRM, decided to retain the proposed language of 36 CFR 1190.130(g) relating to doors to hazardous areas. The subject of door pressures and door closers was carefully examined. The ATBCB decided to revise 36 CFR 1190.130(h)(2) to delete the force requirements for exterior doors. Comments questioned the state-of-the-art technology and research in this matter. The ATBCB, through the National Bureau of Standards, is actively researching this matter.

The proposed 36 CFR 1190.140, Windows, has been reserved until the Board receives additional research and information on this subject.

The subject of toilets, also addressed in the scoping provisions of Subpart C, also entailed considerations of unisex toilets, 36 CFR 1190.150. The ATBCB has decided, on this highlighted issue, to retain the provision on unisex toilets. Commenters generally favored this requirement but requested that it be clarified that only one water closet and one lavatory be provided in each facility. The unisex facility is especially

desirable for severely disabled persons who have attendants of the opposite sex.

The text of proposed 36 CFR 1190.160, drinking fountains and water coolers, was corrected to reflect the dimensions in the figures for clarification of descriptive language.

The question raised by commenters on proposed 36 CFR 1190.170, Controls and operating mechanisms, was whether controls should be required to be operable by one hand, similar to ANSI A117.1 (1980). It was agreed that the guidelines and requirements should reflect the ANSI language and this subsection has been changed accordingly.

The provision in proposed 36 CFR 1190.180, Alarms attracted considerable comment to the effect that devices and procedures need to be developed to provide earlier protection warning for deaf/hearing impaired and blind/visually impaired people. The ATBCB decided to require that visual and auditory alarms operate off the same power source. In proposed 36 CFR 1190.180(c)(3) the frequency requirement has been revised to "less than 5 Hz," in response to commenters' suggestions to make this provision similar to ANSI A117.1 (1980). Also, this will lessen the likelihood of epileptic seizures.

The Board has decided to reserve 36 CFR 1190.190, Tactile warnings, until additional research is obtained. The Board determined that there does not appear to be any immediate and critical need for tactile warnings, although tactile warnings might provide some assistance and convenience to those who are not skilled in proper cane techniques. For information concerning the technical specifications for tactile warnings, see ANSI A117.1-1980, Section 4.29.

The ATBCB highlighted for public comment the question of contrasting colors and specific shapes to be used as part of the signage to identify particular elements and spaces in proposed 36 CFR 1190.200. The comments support the ATBCB decision to retain the language of the NPRM and also indicated the utility of further research on these matters.

Another highlighted issue, in proposed 36 CFR 1190.210, was whether the maximum height for an operable part of a public telephone should be 4'-0" (1220mm) or 4'-6" (1372mm) high. The matter attracted considerable comment. The ATBCB decided that the human data research supported both 4'-0" maximum height for frontal and diagonal reach approaches and 4'-6" maximum height for side reach. Comments received supported both

heights for all telephones. The guidelines and requirements have been modified to provide for both heights. This is consistent with proposed 36 CFR 1190.40, Human data. At least one telephone per bank shall be installed at 4'-0". Reference to TDDs has been deleted from this section.

36 CFR 1190.220, Seating, tables, and work surfaces, has been retained as in the NPRM. The section did not generate adverse comments. The ATBCB provision is similar to that in ANSI A117.1 (1980).

36 CFR 1190.230, Assembly areas, is different from the NPRM. The ATBCB rule will facilitate disabled persons' access by providing seating throughout the entire seating plan. The space for two persons has been expanded to 5'-6" to reflect ANSI requirements and to provide space between the wheelchairs.

Comments on § 1190.240, Storage, were limited and basically supportive. The language of the NPRM has been retained and a drawing added.

Subpart E—Special Building or Facility Types and Elements, continues to be reserved in the final rule, as in the NPRM. This subpart will be developed in future rulemaking. The guidelines and requirements as issued now will form the basis for special use guidelines and requirements which will then be applicable to the development of standards under the Architectural Barriers Act for special building types or special use facilities to the extent that these requirements enumerate elements or spaces that would be required by the Architectural Barriers Act to be accessible to handicapped persons. ATBCB expects to interact with the Federal agencies having expertise in specific areas to develop guidelines for the unique aspects of special use facilities. For example, the Department of Interior will be involved in the development of recommendations for historical buildings and recreational facilities, the Department of Health and Human Services, Department of Defense and Veterans Administration will be consulted on recommendations for hospitals.

The Department of Housing and Urban Development is also cooperating in the development of minimum guidelines and requirements for residential structures to be published later at Subpart E. This section of Subpart E will include specific scoping and technical provisions establishing guidelines and requirements for agencies' standards to be issued under the Architectural Barriers Act for accessibility in residential structures and accessible dwelling units. The guidelines and requirements issued now

are applicable to the development of standards under the Architectural Barriers Act to the extent that these requirements enumerate features, other than when affixed to or within an interior dwelling unit, required by the Architectural Barriers Act to be accessible to handicapped persons. See 24 CFR Part 40. These issues may be reexamined by HUD and the ATBCB as part of the rulemaking relating to the details of accessible residential structures. Such reexamination may result in making specific exceptions for residential structures to the general ATBCB requirements.

G. Future Activities

The ATBCB recognizes that technology and accessibility needs are changing. It intends to regularly review these guidelines and requirements to ensure they incorporate state-of-the-art technology as well as respond to the needs of disabled persons.

The ATBCB, as noted throughout this preamble, will be undertaking research to define and expand the guidelines and requirements. In addition, the ATBCB may undertake research concerning the accessibility needs of handicapped persons. The ATBCB encourages the public to provide the Board with information on new and innovative methods to eliminate barriers.

H. Regulatory Analysis

As an independent Federal agency, the ATBCB is not required to comply with Executive Order 12044; however, a draft regulatory analysis was prepared voluntarily and was published in the *Federal Register* for comment along with the NPRM. The ATBCB has solicited and received the views of the Council on Wage and Price Stability on its final rule and on the materials in the regulatory analysis. Those views are included in the rulemaking docket and are available for inspection at the ATBCB offices. The final regulatory analysis is also available for inspection at the ATBCB offices, 330 "C" Street, SW., Room 1014, Washington, D.C. 20202, from 9:00 a.m. to 5:30 p.m., Monday through Friday. For information on the final regulatory analysis, contact Sally Free, 202/245-1801.

I. National Environmental Policy

A negative environmental declaration prepared pursuant to the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4232, indicates that the issuance of the minimum guidelines will not have any significant impact on the environment. This document was

prepared before the NPRM and remains in the public docket. The ATBCB received no comments indicating any environmental impact of the guidelines and requirements.

J. Effective Date

Pursuant to 5 U.S.C. 553(d), the ATBCB has determined that it is necessary to make these guidelines and requirements effective on the date issued in order to expedite the development and issuance of consistent Federal standards in accordance with the Architectural Barriers Act of 1968.

The Act, at noted above, directs four Federal agencies to "prescribe standards for the design, construction, and alteration of (certain Federal and federally-assisted) buildings" and "to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings."

These four Federal agencies, as members of the ATBCB, have been actively involved in the development of these guidelines and requirements. The ATBCB expects the agencies to act expeditiously to issue final revised standards within a reasonable time, which should not exceed one year after the effective date of the minimum guidelines and requirements. There is no reason, therefore, to delay the effective date of this rule. Because these ATBCB minimum guidelines and requirements serve as a basis for the standards set by the four standard setting agencies, the general public is not adversely affected by the effective date being the date of issuance.

However, if the guidelines and requirements effective date is delayed 30 days, the public could be adversely affected because it would, in effect, further delay the issuance of consistent accessibility standards by the four Federal agencies.

K. Conclusion

In consideration of the foregoing, Part 1190 is added to Title 39 of the Code of Federal Regulations as set forth below. The preamble to Part 1190 will be published in the Code of Federal Regulations as Preamble A.

The guidelines and requirements are issued under 29 U.S.C. 792, section 502 of the Rehabilitation Act of 1973, as amended.

Dated: January 6, 1981.

By vote of the Board.

Mason H. Rose V.

Chairperson, Architectural and Transportation Barriers Compliance Board.

Donald Elisburg,

Vice Chairperson, Architectural and Transportation Barriers Compliance Board, Assistant Secretary for Employment Standards, Department of Labor.

PART 1190—MINIMUM GUIDELINES AND REQUIREMENTS FOR ACCESSIBLE DESIGN

Subpart A—General

Sec.

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1190.200 Signage.

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1190.240 Storage.

Subpart E—Special Building or Facility Types or Elements. [Reserved]—Preamble A.

Authority: Sec. 502(b)(7) of the Rehabilitation Act of 1973 (29 U.S.C. 792(b)(7)), as amended by the Rehabilitation, Comprehensive Services, and Developmental

Disabilities Amendments of 1978 (Pub. L. 95-602).

Subpart A—General

§ 1190.1 Purpose.

The purpose of this part is to implement Section 502(b)(7) of the Rehabilitation Act of 1973 (29 U.S.C. 792(b)(7)), as amended, which requires the Architectural and Transportation Barriers Compliance Board to establish minimum guidelines and requirements for standards issued under the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*), as amended. This part and the standards to be based on it are intended to ensure that certain buildings and facilities financed with Federal funds are so designed, constructed, or altered as to be readily accessible to, and usable by, physically handicapped persons.

§ 1190.2 Applicability: Buildings and facilities subject to guidelines and standards.

(a) *Definitions.* As used in this section, the term:

(1) "Constructed or altered on behalf of the United States" means acquired by the United States through lease-purchase arrangement, constructed or altered for purchase by the United States, or constructed or altered for the use of the United States.

(2) "Primarily for use by able-bodied military personnel" means expected to be occupied, used, or visited principally by military service personnel. Examples of buildings so intended are barracks, officers' quarters, and closed messes.

(3) "Privately owned residential structure" means a single or multi-family dwelling not owned by a unit or subunit of Federal, state, or local government.

(b) *Buildings and facilities covered.* Except as provided in paragraph (c) of this section, the guidelines and requirements, and the standards to be issued by the standard-setting agencies to conform to it, apply to any building or facility—

(1) The intended use for which either—

(i) Will require that such building or facility be accessible to the public, or

(ii) May result in employment or residence therein of physically handicapped persons; and

(2) Which is—

(i) To be constructed or altered by or on behalf of the United States;

(ii) To be leased in whole or in part by the United States;

(iii) To be financed in whole or in part by a grant or loan made by the United States after August 12, 1968, if the building or facility may be subject to standards for design, construction, or

alteration issued under the law authorizing the grant or loan; or

(iv) To be constructed under the authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or Title III of the Washington Metropolitan Area Transit Regulation Compact.

(c) *Buildings and facilities not covered.* The guidelines and requirements, and the standards do not apply to—

(1) Any privately owned residential structure, unless it is leased by the Federal government on or after January 1, 1977, for subsidized housing programs; or

(2) Any building or facility on a military installation designed and constructed primarily for use by military personnel.

(3) Although the ATBCB has not reviewed in detail the particular program statutes, it recognizes that, as a general rule, buildings purchased or acquired directly by the Government without construction or alteration are not covered by the Architectural Barriers Act.

(d) *Effective date of standards.* Any covered building or facility, as provided in this section, which is designed, constructed, altered, or leased after the effective date of a standard issued under this guideline which is applicable to the building or facility, shall be designed, constructed, altered, or leased in accordance with the standard. For purposes of this section, any design, construction, alteration or lease for which bids or offers are received before the effective date of the applicable standards, in response to an invitation for bids or requests for proposals, is not subject to the standard.

§ 1190.3 Definitions.

As used in this part, the term:

"ATBCB" means the Architectural and Transportation Barriers Compliance Board.

"Access aisle" means a pedestrian space between elements such as parking spaces, seating, and desks.

"Accessible" means complying with the specifications and requirements of this part and with any applicable standard issued by a standard-setting agency.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or facility and complying with the space and reach requirements of this part. (Interior accessible routes may include but are not limited to corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may

include but are not limited to parking access aisles, curb ramps, walks, ramps, and lifts.)

"Accessible space" means a space that complies with this part.

"Addition" means an expansion, extension, or increase in the gross floor area of a building or facility.

"Agency" means a Federal department, agency or instrumentality, as defined in sections 551(1) and 701(b)(1) of Title 5, United States Code, or an official authorized to represent an agency.

"Alteration" means any change in a building or facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangement in structural parts, and extraordinary repairs. It does not include normal maintenance, reroofing, interior decoration, or changes to mechanical systems.

"Architectural Barriers Act" means the Architectural Barriers Act of 1968, Pub. L. 90-480, as amended, 42 U.S.C. 4151 *et seq.*

"Automatic door" means a door—

(1) Used for human passage and

(2) Equipped with a power-operated mechanism and controls that open and close the door upon receipt of a momentary actuating signal.

"Building or facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, parks, sites, or other real property or interest in such property.

"Common areas" means those interior and exterior spaces available for use by all occupants and users of a building or facility, exclusive of any spaces that are made available for the use of a restricted group of people or the use of which is restricted to particular functions.

"Construction" means any erection of a new building or of an addition to an existing building.

"Cross slope" means the slope that is perpendicular to the direction of travel (see "running slope").

"Curb ramp" means a short ramp cutting through a curb or built up to it.

"Disability" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following bodily systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine.

"Egress" or "means of egress" means a continuous and unobstructed way of exit travel from any point in a building or facility to an exterior walk or out of a

fire zone. It includes all intervening rooms, spaces, or elements.

"Element" means an architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, water closet.

"Entrance" means any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules, if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).

"Essential features" means those elements and spaces that make a building or facility usable by, or serve the needs of, its occupants or users. Essential features include but are not limited to entrances, toilet rooms, and accessible routes. Essential features do not include those spaces that house the major activities for which the building or facility is intended, such as classrooms and offices.

"Exception" means a special provision in this part or in a standard which indicates an acceptable alternative, under specified circumstances, to a requirement stated directly above the exception.

"Executive Director" means the Executive Director of the ATBCB.

"Extraordinary repair" means the replacement or renewal of any element of an existing building or facility for purposes other than normal maintenance.

"Full and fair cash value" is calculated for the estimated date on which work will commence on a project and means—

(1) The assessed valuation of a building or facility as recorded in the assessor's office of the municipality and as equalized at one hundred percent (100%) valuation; or

Note.—The one hundred percent (100%) equalized assessed value shall be based upon the state's most recent determination of the particular city's or town's assessment ratio. Example: Town X has an assessment ratio of forty percent (40%), and the particular building in question is assessed at \$200,000.00. To determine the equalized assessed value of this building, divide \$200,000.00 by .40, and the equalized assessed value equals \$500,000.00.

(2) The replacement cost; or

(3) The fair market value.

"Guidelines, and requirements" means this part.

"Operable part" means a part of equipment or an appliance used to insert or withdraw objects, to activate or deactivate equipment, or to adjust the

equipment (e.g., coin slot, push button, handle).

"Physically handicapped person" means any person who has a disability which substantially limits one or more major life activity, including but not limited to such functions as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

"Power-assisted door" means a door—

(1) Used for human passage; and
(2) With a mechanism that helps to open the door, or relieve the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself.

"Ramp" means a walking surface that has a running slope greater than 1:20.

"Running slope" means the slope that is parallel to the direction of travel (see "cross slope").

"Section 502 of the Rehabilitation Act" or "Section 502" means Section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. 792, as amended.

"Shall" denotes a mandatory requirement.

"Signage" means the display of written, symbolic, tactile, or pictorial information.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right-of-way.

"Site improvements" means landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and similar site additions.

"Space" means a definable area, e.g., toilet room, hall, assembly area, parking area, entrance, storage room, alcove, courtyard, or lobby.

"Standard" means any standard for accessibility issued under the Architectural Barriers Act.

"Standard-setting agency" means one of the four agencies required to issue standards under the Architectural Barriers Act, i.e., the General Services Administration, the Department of Housing and Urban Development, the Department of Defense, and the United States Postal Service.

"Structural impracticability" means having little likelihood of being accomplished without removing or altering a load-bearing structural member at an increased cost of 50 percent or more of the value of the element of the building or facility involved.

"Tactile" means perceptible through the sense of touch.

"Tactile warning" means a surface texture applied to or built into walking surfaces or other elements to warn

visually impaired persons of hazards in the path of travel.

"Walk" means an exterior pathway or space with a prepared surface intended for pedestrian use and having a slope of 1:20 or less. It includes general pedestrian areas such as plazas and courts.

§ 1190.4 Issuance of Architectural Barriers Act standards by standard-setting agencies.

(a) These guidelines and requirements are the minimum requirements for standards issued under the Architectural Barriers Act by the Administrator of General Services, Secretary of Housing and Urban Development, Secretary of Defense, and Postmaster General.

(b) Standards which conform to or exceed the provisions of the guidelines shall be deemed in compliance with the guidelines and requirements.

(c) Each standard-setting agency is encouraged to issue standards which follow the format of these guidelines and requirements. However, standards which differ in format from these guidelines and requirements but are otherwise consistent with the guidelines and requirements shall be deemed in compliance with these guidelines and requirements.

§ 1190.5 Guidelines: Other uses.

The guidelines and requirements may be used by other governmental and nongovernmental entities to make buildings and facilities accessible to, and usable by, physically handicapped persons.

§ 1190.6 Interpretation of guidelines.

(a) These guidelines and requirements shall be liberally construed to carry out the purposes and provisions of the Architectural Barriers Act and Section 502 of the Rehabilitation Act.

(b) Words importing the singular number may extend and be applied to the plural and vice versa. However, unless otherwise specified in the guidelines and requirements, each element or space of a particular building or facility shall comply with the guidelines and requirements.

(c) Use of the imperative mood, e.g., "provide," means the provision is mandatory. This form is being used to avoid wordiness and monotony but means the same as if the word "shall" had been included.

(d) The provisions in the minimum guidelines and requirements are based upon adult dimensions and anthropometrics.

(e) Dimensions that are not marked "minimum" or "maximum" are absolute.

unless otherwise indicated in the text or captions. All dimensions are subject to conventional building tolerances for field conditions.

§ 1190.7 Effect of State or local law.

The obligation to comply with this part is not affected by any State or local law.

§ 1190.8 Site conditions. [Reserved]

§ 1190.9 Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of these guidelines and requirements is declared invalid for any reason, the remaining portions of these guidelines and requirements that are severable from the invalid part shall remain in full force and effect. If a part of these guidelines and requirements is invalid in one or more of its applications, the part shall remain in effect in all valid applications that are severable from the invalid applications.

Subpart B [Reserved]

Subpart C—Scope

§ 1190.30 Scope. [Reserved]

§ 1190.31 Accessible buildings and facilities: New construction.

Except as otherwise provided in Subpart E, all new construction of buildings and facilities shall comply with the following minimum requirements:

(a) *Accessible route.* At least one accessible route shall comply with § 1190.50, Walks, floors, and accessible routes, and shall connect an accessible building entrance with:

(1) Transportation facilities located within the property line of a given site, including passenger loading zones, public transportation facilities, taxi stands, and parking;

(2) Public streets and sidewalks;

(3) Other accessible buildings, facilities, elements, and spaces that are on the same site; and

(4) All accessible spaces, rooms, and elements within the building or facility.

(b) *Parking and passenger loading zones.* If any parking is provided, for employees or visitors, or both, each such parking area shall comply with § 1190.60, Parking and passenger loading zones, and the following table:

Total parking in lot

51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	(1)
Over 1000	(2)

¹ 2 percent of total.

² 20 plus 1 for each 100 over 1000.

(1) *EXCEPTION:* The total number of accessible parking spaces may be distributed among parking lots, if greater accessibility is achieved.

(2) *EXCEPTION:* This paragraph does not apply to parking provided for official government vehicles owned or leased by the government and used exclusively for government purposes.

If passenger loading zones are provided, at least one passenger loading zone shall comply with § 1190.60, Parking and passenger loading zones. Parking spaces for side lift vans, § 1190.60(c)(2)(a), are accessible parking spaces and may be used to meet the requirements of this paragraph.

(c) *Ramps and curb ramps.* If there is an abrupt level or grade change, if the slope is greater than 1:20, and if no other means of accessible vertical access is provided, a ramp or curb ramp shall be provided. If a ramp or curb ramp is provided, it shall comply with § 1190.70, Ramps and curb ramps.

(d) *Stairs.* Except as provided in paragraph 1190.31(f)(1), stairs connecting levels that are not connected by an elevator shall comply with § 1190.80, Stairs.

(e) *Handrails.* Handrails shall be provided at each ramp and staircase as required in § 1190.70, Ramps and curb ramps, and § 1190.80, Stairs, respectively, and shall comply with § 1190.90, Handrails.

(f) *Elevators.* One passenger elevator complying with § 1190.100, Elevators shall serve each level in all multi-story buildings and facilities. If more than one elevator is provided, each elevator shall comply with § 1190.100, Elevators.

(1) *Exception.* Elevator pits, elevator penthouses, mechanical rooms, piping, or equipment catwalks are excepted from this requirement.

(2) *Exception.* Ramps or platform lifts complying with § 1190.70, Ramps and curb ramps, and § 1190.110, Platform lifts, respectively, may be used in lieu of an elevator.

(g) *Platform lifts.* If the slope is greater than 1:20, and if no other means of

accessible vertical access is provided, a platform lift may be provided if there is an abrupt level or grade change. If a platform lift is provided, it shall comply with § 1190.110, Platform lifts.

(h) *Entrances.* At least one entrance to a building or facility shall comply with § 1190.120, Entrances. When a building or facility has entrances which normally serve any of the following functions: transportation facilities; passenger loading zones; parking facilities; taxi stands; public streets and sidewalks; accessible interior vertical access, then at least one of the entrances serving each such functions shall comply with § 1190.120, Entrances. When a building or facility has entrances on more than one exposure, then at least one entrance for each exposure shall comply with § 1190.120, Entrances, unless site conditions preclude accessibility.

(i) *Doors.* (1) At each accessible entrance to a building or facility, at least one door shall comply with § 1190.130, Doors.

(2) For each space within a building or facility, at least one door at each accessible entrance to the accessible space shall comply with § 1190.130, Doors.

(3) Each door required by § 1190.50(h), Egress, shall comply with § 1190.130, Doors.

(4) Each door that is an element of an accessible route shall comply with § 1190.130, Doors.

(j) *Windows.* [Reserved]

(k) *Toilet and bathing facilities.* Each toilet and bathing facility provided shall comply with § 1190.150, Toilet and bathing facilities, and in each such facility where any of the fixtures and accessories specified in § 1190.150 (b) and (c) are provided, at least one accessible fixture and accessory of each type provided shall comply with § 1190.150 (b) and (c). For special use situations, refer to Subpart E, Special Building or Facility Types or Elements.

(l) *Drinking fountains and water coolers.* If drinking fountains or water coolers are provided, approximately 50% of those provided on each floor shall comply with § 1190.160, Drinking fountains and water coolers, and shall be dispersed throughout the floor. If only one drinking fountain or water cooler is provided on any floor, it shall have two levels and the lower level shall comply with § 1190.160.

(m) *Controls and operating mechanisms.* If controls and operating mechanisms are provided, each shall comply with § 1190.170, Controls and operating mechanisms.

(n) *Alarms.* If alarm systems are provided, each shall comply with § 1190.180, Alarms.

Total parking in lot

Required minimum number of accessible spaces

1 to 25	1
26 to 50	2

(c) *Tactile warnings.* Tactile warnings complying with § 1190.130(g), Doors to hazardous areas, shall be provided on the hardware of all doors that lead to hazardous areas. Tactile warnings shall not be used at emergency exit doors.

(p) *Signage.* (1) The international symbol of accessibility shall comply with paragraph 1190.200(e), Symbol of accessibility, and shall be used at the following locations:

- (i) Parking spaces designated as reserved for the physically handicapped;
- (ii) Passenger loading zones;
- (iii) Accessible entrances;
- (iv) Accessible toilet and bathing facilities.

(2) Informational signing, if provided, shall comply with § 1190.200.

(q) *Telephones.* At each location where public telephones are provided, each telephone shall comply with § 1190.210, Telephones. If public telephones are provided in a building or facility, then a reasonable number but always at least one shall be equipped with a volume control.

(r) *Seating, tables, and work surfaces.* If fixed seating, tables, and work surfaces are provided, at least 5 percent of each element shall comply with § 1190.220, Seating, tables, and work surfaces.

(s) *Assembly areas.* If assembly areas are provided, accessible viewing positions shall comply with § 1190.230, Assembly areas, and the following table:

Capacity of assembly	Number of viewing positions
1 to 25.....	1
26 to 50.....	2
51 to 75.....	3
76 to 100.....	4
101 to 150.....	5
151 to 200.....	6
201 to 300.....	7
301 to 400.....	8
401 to 500.....	9
501 to 1000.....	(1)
Over 1000.....	(7)

¹ 2 percent of total.

² 20 plus 1 for each 100 over 1000.

(t) *Storage.* If storage facilities such as cabinets, shelves, closets and drawers are provided in accessible spaces for occupant use, at least one storage facility of each type provided shall comply with § 1190.240, Storage.

§ 1190.32 Accessible buildings and facilities: Additions.

Each addition to an existing building or facility shall comply with § 1190.31, New construction, except as follows:

(a) *Entrances.* If a new addition to a building or facility does not have an entrance, then at least one entrance in

the existing building or facility shall comply with § 1190.120, Entrances.

(b) *Accessible route.* If the only accessible entrance to the addition is located in the existing building or facility, then at least one accessible route shall comply with § 1190.50, Walks, floors, and accessible routes, and shall provide access through the existing building or facility to all rooms, elements, and spaces in the new addition.

(c) *Toilet and bathing facilities.* If there are no toilet rooms and bathing facilities in the addition and these facilities are provided in the existing building, then at least one toilet and bathing facility in the existing building shall comply with § 1190.150, Toilet and bathing facilities.

(d) *Elements, spaces, and common areas.* If elements, spaces, or common areas are located in the existing building and they are not provided in the addition, consideration should be given to making those elements, spaces, and common areas accessible in the existing building.

§ 1190.33 Accessible buildings and facilities: Alterations.

(a) *General.* Alterations to existing buildings or facilities shall comply with the following:

(1) If existing elements, spaces, essential features, or common areas are altered, then each such altered element, space, feature, or area shall comply with the applicable provisions of § 1190.31, Accessible buildings and facilities: New construction.

(2) If power-driven vertical access equipment (e.g., escalator) is planned or installed where none existed previously, or if new stairs (other than stairs installed to meet emergency exit requirements) requiring major structural changes are planned or installed where none existed previously, then a means of accessible vertical access shall be provided that complies with § 1190.70, Ramps and curb ramps; § 1190.100, Elevators; or § 1190.110, Platform lifts.

(3) If alterations of single elements, when considered together, amount to an alteration of a space of a building or facility, the entire space shall be made accessible.

(4) *Signage.* If an existing building contains some but not all accessible elements and spaces, informational signage complying with § 1190.200, Signage, directing the user to accessible facilities shall be placed at each accessible entrance. Each inaccessible entrance and each inaccessible toilet room shall have signage directing the user to the accessible entrance(s) or toilet room(s).

(b) *Alterations involving more than 50% of the full and fair cash value.* If the total cost of all alterations (including but not limited to electrical, mechanical, plumbing and structural changes) for a building or facility within any twelve (12) month period is 50% or more of the building's full and fair cash value (as defined by § 1190.3), then each element or space that is altered or added shall comply with the applicable provisions of § 1190.31, Accessible buildings and facilities: New construction; and the altered building shall contain:

(1) At least one accessible route complying with § 1190.50, Walks, floors, and accessible routes, and § 1190.33(a);

(2) At least one accessible entrance complying with § 1190.120, Entrances. If additional accessible entrances are altered, then they shall comply with § 1190.33(a)(1); and

(3) The following toilet facilities, whichever number is greater:

(i) At least one toilet facility for each sex in the altered building complying with § 1190.150, Toilet and bathing facilities;

(ii) At least one toilet facility for each sex on each substantially altered floor, where such facilities are provided, complying with § 1190.150, Toilet and bathing facilities.

(4) *Exception.* If the cost of the elements and spaces required by § 1190.33(b)(1), (2), and (3) exceeds 15% of the total cost of all other alterations, then a schedule may be established by the standard-setting and/or funding agency to provide the required improvement within a 5 year period.

(5) *Exception.* If the alteration is limited solely to the electrical, mechanical, or plumbing system and does not involve the alteration of any elements and spaces required to be accessible under this Part 1190 the § 1190.33(b) does not apply.

(6) *Exception.* Consideration shall be given to providing accessible elements and spaces in each altered building or facility complying with:

- (i) Section 1190.60, Parking and Passenger Loading Zones;
- (ii) Section 1190.160, Drinking fountains and Water Coolers;
- (iii) Section 1190.180, Alarms;
- (iv) Section 1190.210, Telephones;
- (v) Section 1190.220, Seating Tables and Work Surfaces;
- (vi) Section 1190.230, Assembly Areas;
- (vii) Section 1190.240, Storage.

§ 1190.34 Accessible buildings and facilities: Leased.

(a) Buildings or facilities or portions thereof leased by the Federal government shall comply with the requirements of § 1190.31, New

construction, § 1190.32, Additions, and § 1190.33, Alterations.

(b) If no fully accessible space is available, space may be leased only if the following conditions are met:

(1) At least one accessible route is provided from an accessible entrance complying with § 1190.120, Entrances, to all leased portions of the building or facility and to each essential feature which serves that portion of the building or facility. The accessible route shall comply with the requirements of § 1190.50 Walks, floors, and accessible routes.

(2) Each essential feature of the portion of the building or facility to be leased is accessible and complies with the applicable sections.

(3) Common areas that are approved space needs of the occupant agency serving the portions of the building or facility to be leased are accessible and comply with the applicable section.

(c) *Exception.* If no space complying with paragraph (a) or (b) of this section is available, space as available may be leased, provided—

(1) The leasing authority certifies that space is unavailable due to remoteness of the area or that the lease is necessary for officials servicing natural or human-made disasters; and

(2) The ATBCB is provided a listing of instances in which this exception is applied as part of the semi-annual report to Congress.

(d) Any other deviation from the requirements of § 1190.34 shall be made only through the waiver or modification process.

Subpart D—Technical Provisions

§ 1190.40 Human data.

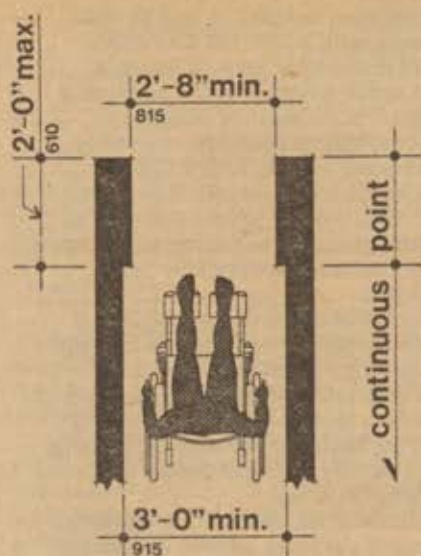
(a) *General.* This section is the basis for clearances and equipment location required by other sections.

(b) *Moving wheelchair clearances.* Provide the clearances for moving wheelchairs as follows:

(1) Minimum clear width for passage of a single wheelchair is 3'0" (915 mm) (fig. 4.1).

(i) *Exception.* The clear width may be reduced to 2'8" (815 mm) for a distance not to exceed 2'0" (610 mm) in length at points such as doorways (fig. 4.1).

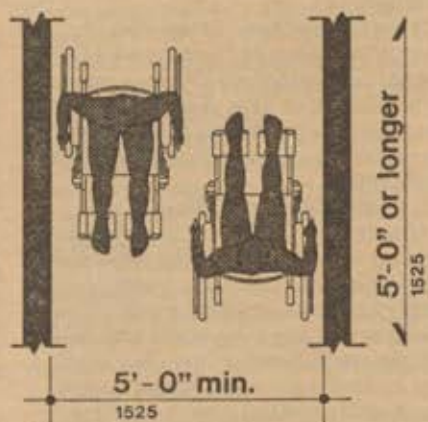
(ii) [Reserved].



passage

4.
1

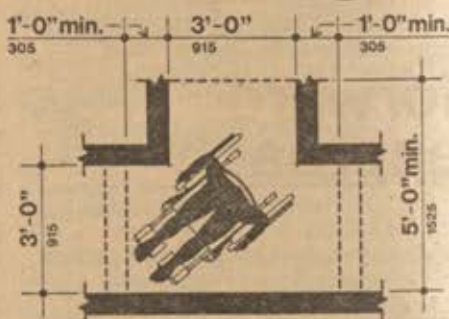
(2) Minimum clear width for two wheelchairs to pass is 5'0" (1,525 mm) (fig. 4.2).



two-way

4.
2

(3) Minimum clear space to make a 180 degree turn is 5'0" (1,525 mm) diameter (fig. 4.3) or a T-shaped space that complies with Figure 4.4.

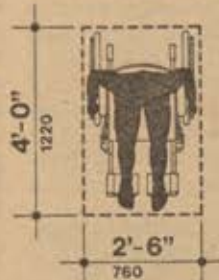


t-turn

4.
4

(c) *Clear floor or ground space.* Provide the following clear floor or ground space to accommodate a single, stationary occupied wheelchair:

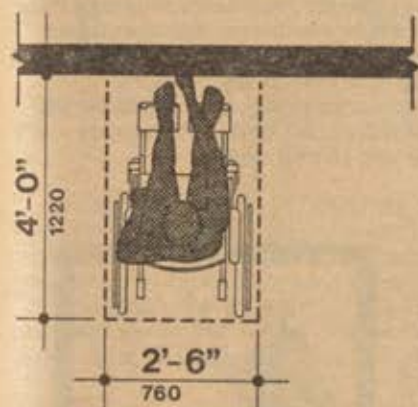
(1) Clear floor or ground space shall be a minimum of 2'6" by 4'0" (760 mm by 1,220 mm) (fig. 4.5).



clear floor or ground space

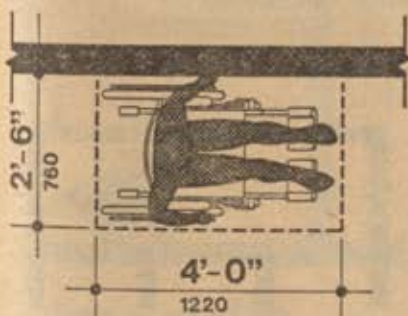
4.
5

(2) Position clear floor or ground space for either forward or parallel approach to an object or element as required (figs. 4.6 and 4.7).



forward approach

4.
6



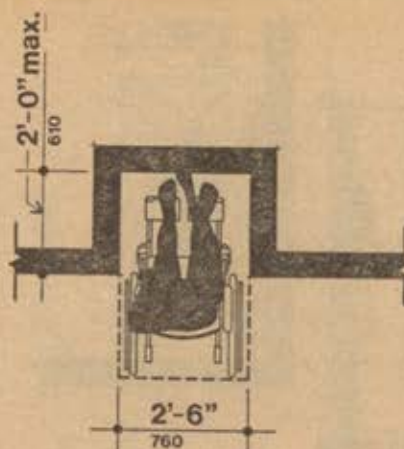
parallel approach

4.
7

(3) Clear floor or ground space may overlap the clear space required under some objects.

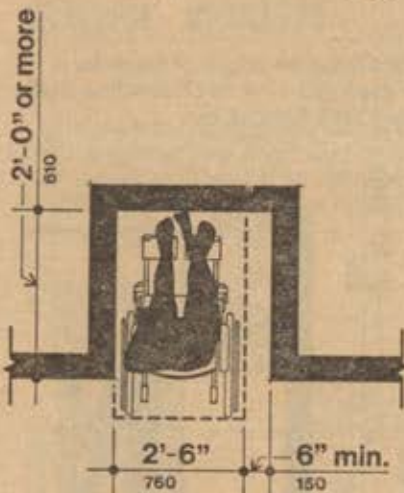
(4) Clear floor or ground space shall adjoin or overlap an accessible route or another clear floor or ground space for at least one full, unobstructed side.

(5) If clear floor or ground space is confined or restricted on all or part of three sides, provide additional maneuvering space adjoining clear floor or ground space as shown in figures 4.8, 4.9, 4.10 and 4.11.



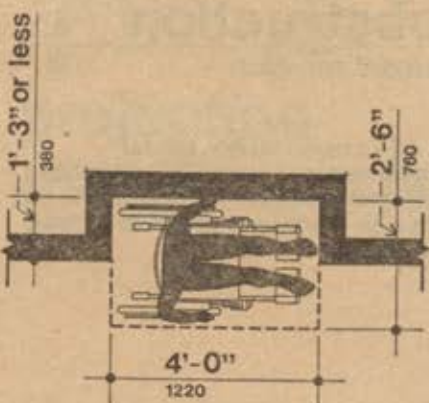
alcove

4.
8



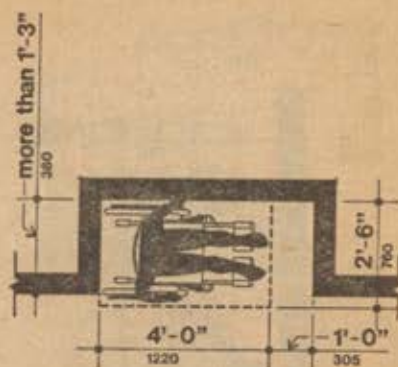
alcove

4.
9



alcove

4.
10



alcove

4.
11

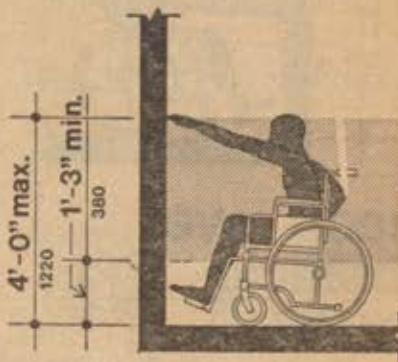
(6) Surfaces of clear floor or ground spaces shall comply with § 1190.50(i), walks, floors, and accessible routes.

(d) *Reach limitations.* Reach limitations are a function of approach in the clear floor or ground space:

(1) Forward reach:

(i) Maximum height of reach for a forward approach shall be 4'-0" (1220 mm) (fig. 4.12).

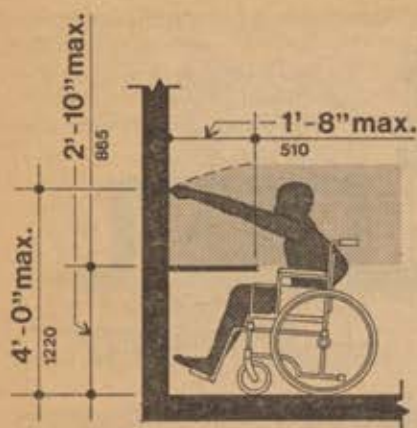
(ii) Minimum height of reach for a forward approach shall be 1'-3" (380 mm) (fig. 4.12).



forward reach

4.
12

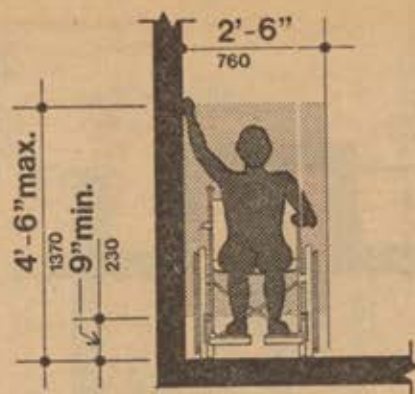
(iii) Maximum height of reach for a forward approach over an obstruction shall comply with figures 4.13 and 4.14.



reach over obstacle

forward approach

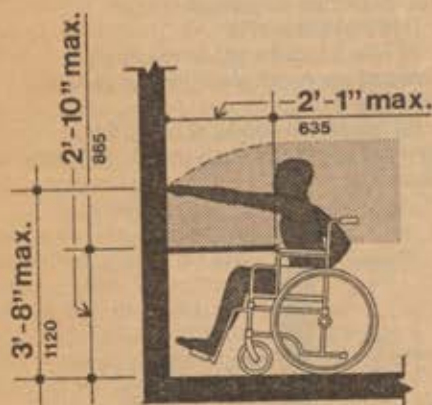
4.
13



side reach

4.
15

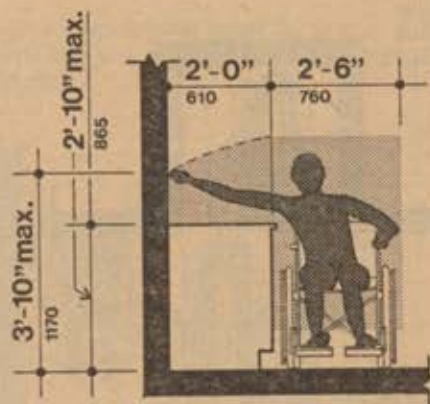
(iii) Maximum height of reach for a side approach over an obstruction shall comply with figure 4.16.



reach over obstacle

forward approach

4.
14



reach over obstruction

parallel approach

4.
16

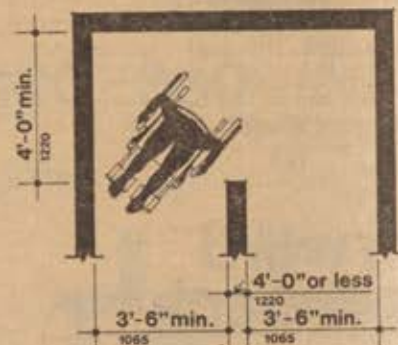
- (2) Side reach (parallel approach):
- Maximum height of reach for a side approach shall be 4'-6" (1,370 mm) (fig. 4.15).
 - Minimum height of reach for a side approach shall be 9 inches (230 mm) (fig. 4.15).

(3) To be accessible, special equipment may require measurements different from those provided above and these measurements should be dictated by equipment design.

§ 1190.50 Walks, floors, and accessible routes.

(a) *General.* Accessible routes required by Subpart C—Scope shall comply with this section.

(b) *Width.* Provide the minimum clear width for continuous passage and for point passage required by § 1190.40(b)(1) (fig. 4.1). Provide maneuvering clearances as shown in figures 5.1 and 5.2 if the accessible route requires a turn around an obstruction.



turn

maneuvering clearances

5.
1

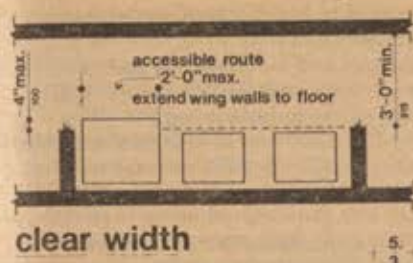


turn

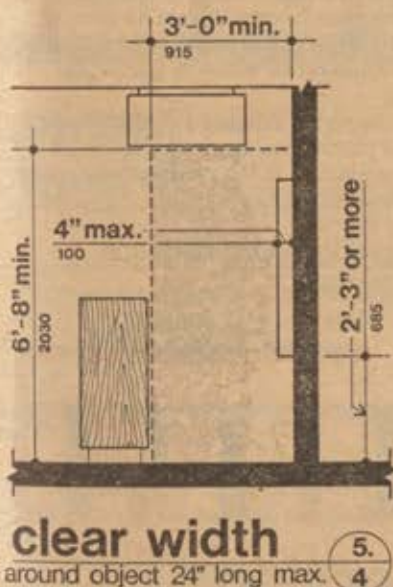
maneuvering clearances

5.
2

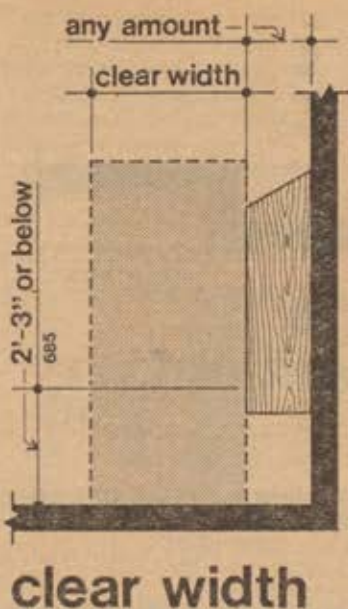
(c) *Protruding objects.* No protruding object shall reduce the clear width of an accessible route or maneuvering space below the minimum required by § 1190.40(b)(1) (fig. 5.3).



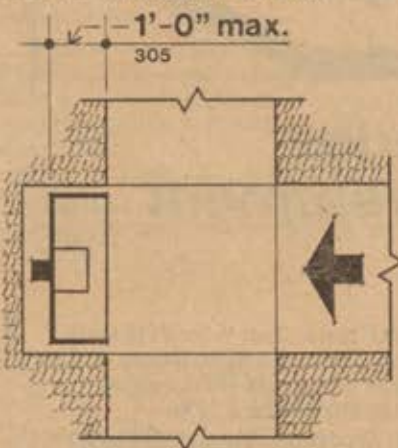
(1) Objects less than 2'0" (610 mm) long that are fixed to wall surfaces shall not project into accessible routes more than 4 inches (100 mm) if mounted with their leading edges between 2'3" and 6'8" (685 mm and 2030 mm) (nominal dimension) above finish floor (fig. 5.4).



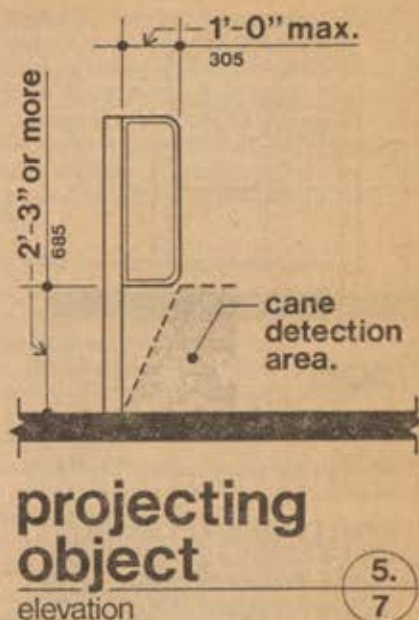
(2) Objects fixed to wall surfaces may project more than 4 inches (100 mm) if mounted with the lower extreme of their leading edge less than 2'3" (685 mm) above the finish floor. These objects shall not project into the required minimum clear width (fig. 5.5).



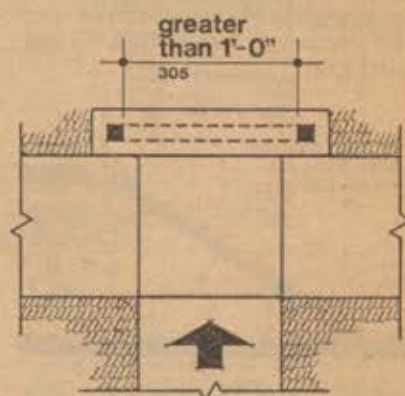
(3) Free standing objects mounted on posts or pylons may overhang 1'0" (305 mm) maximum from 2'3" to 6'8" (685 mm to 2030 mm) above ground or finished floor surface (figs. 5.6 and 5.7).



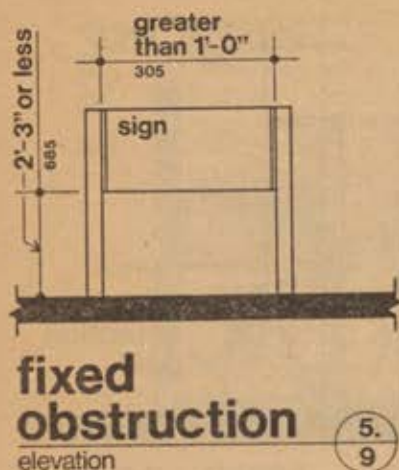
projecting object
plan view



(4) Objects greater than 1'0" (305 mm) wide mounted with their leading edge less than 2'3" (685 mm) may protrude any distance (figs. 5.8 and 5.9).



fixed obstruction
plan view



(d) *Passing space.* If an accessible route has less than a 5'0" (1,525 mm) clear width, provide accessible passing spaces at intervals not exceeding 200 ft. (61 mm) unobstructed view. See figures 4.2 and 4.4 for examples of acceptable passing spaces.

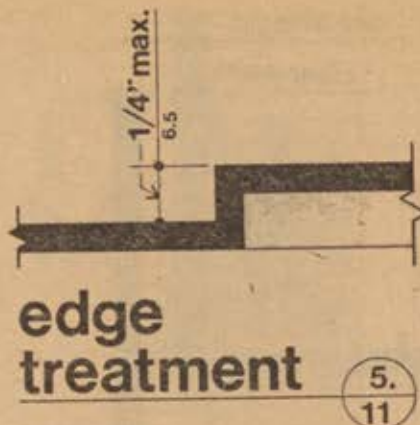
(e) *Vertical clearance.* Provide a minimum vertical clearance (headroom) of 6'8" (2,030 mm) throughout accessible routes. If vertical clearance of area adjoining accessible route is reduced to less than 6'8", (nominal dimension) provide a barrier to warn blind or visually-impaired persons (figs. 5.4 and 5.9 and 5.10).



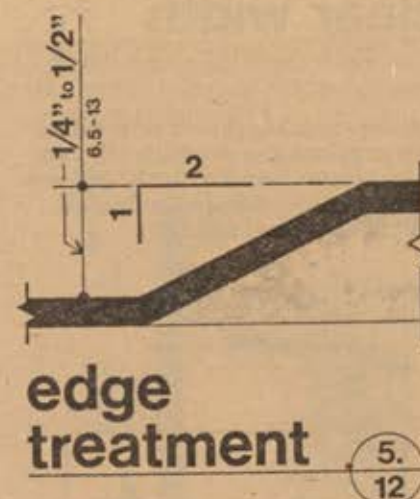
(f) *Slope.* Accessible routes with running slopes of 1:20 or greater shall be considered ramps and shall comply with § 1190.70, Ramps and curb ramps. Cross-slopes on accessible routes shall not exceed 1:48 (1/4 inch per foot).

(g) *Changes in level.* All changes in level or grade in accessible routes shall comply with the following:

(1) Up to 1/4 inch (6 mm); vertical without edge treatment (fig. 5.11).



(2) 1/4 inch to 1/2 inch (6 mm to 13 mm); beveled with slope not exceeding 1:2 (fig. 5.12).



(3) Greater than 1/2 inch (13 mm); comply with § 1190.70, Ramps and curb ramps; § 1190.100, Elevators; or § 1190.110, Platform Lifts.

(i) *Exception.* Exterior sliding door thresholds may be 3/4" (19 mm) maximum if beveled with slope not exceeding 1:2.

(ii) [Reserved]

(4) Stairs shall not be the sole means of vertical access along an accessible route.

(h) *Egress.* Arrange egress so as to be readily accessible from all accessible rooms and spaces. Where fire code provisions require more than one means of egress from any space or room, such means of accessible egress shall also be

provided to handicapped persons.

(1) *Exception.* In multiple story buildings and facilities where at-grade egress from each floor is impossible, either of the following is permitted:

(i) The provision of approved fire and smoke partitions within each story creating horizontal exits; or

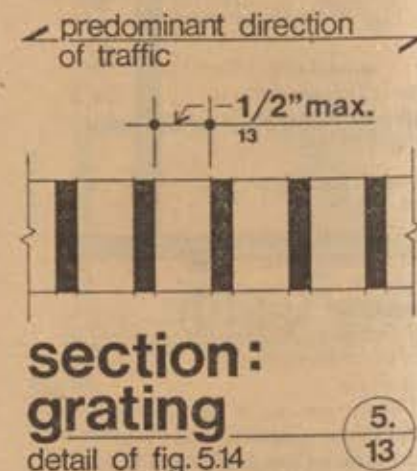
(ii) The provision of areas of refuge within each floor approved by agencies having authority for safety.

(2) [Reserved]

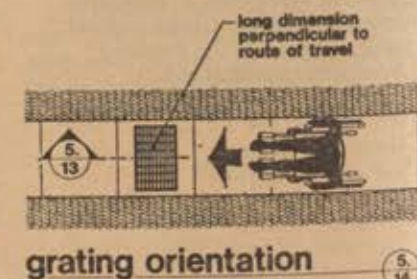
(i) *Ground and floor surfaces—(1) Surface Condition.* Surfaces of paving and floors shall be stable, firm, and slip-resistant. Irregular paving and flooring materials that may cause tripping or difficult wheelchair passage because of height differentials are not permitted on accessible routes.

(2) *Drainage.* Design accessible routes so that their surfaces will not collect water. Gratings located in accessible routes shall have openings no greater than 1/2 inch (13 mm) when measured in the dominant direction of travel (fig. 5.13).

Gratings with elongated openings shall be so placed that the long dimension is perpendicular to the predominant route of travel (fig. 5.14).

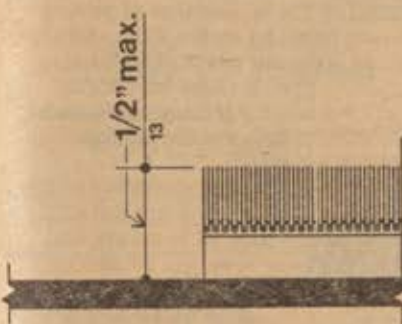


detail of fig. 5.14



(3) Carpeting. If carpet or carpet tile is used on an accessible ground or floor surface, it shall:

- (i) Be securely attached;
- (ii) Have a firm cushion or pad or no cushion or pad;
- (iii) Have a construction of level loop, textured loop, level cut pile, or level cut/uncut pile;
- (iv) Have a maximum combined thickness of pile, cushion, and backing height of 1/2 inch (13 mm) (Fig. 5.15); and



carpet height

5.
15

(v) Exposed edge(s) and trim shall be securely fastened in place and shall comply with paragraph 1190.50(g), Changes in level.

§ 1190.60 Parking and passenger loading zones.

(a) *General.* Parking and passenger loading zones required to be accessible by Subpart C—Scope shall comply with this section.

(b) *Location.* Accessible parking spaces and accessible passenger loading zones shall:

- (1) Be the spaces or zones located closest to the nearest accessible entrance on an accessible route; and
- (2) If located in a separate building or facility, be on the shortest accessible route to an accessible entrance of the parking facility.

(c) *Accessible parking spaces.* Provide accessible parking spaces (fig. 6.1) that:

- (1) Are at least 8'0" (2,440 mm) wide,
- (2) Have an adjacent access aisle at least 5'0" (1,525 mm) wide and shall comply with § 1190.50, Walks, floors, and accessible routes;

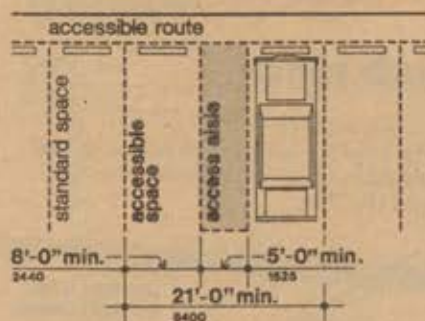
(i) *Exception.* If accessible parking spaces for side lift vans are provided, each shall have an adjacent access aisle at least 8'0" (2,440 mm) wide and shall comply with § 1190.50, Walks, Floors, and Accessible Routes.

(ii) [Reserved].

(3) May share a common access aisle between two parking spaces;

(4) Do not permit parked vehicle overhangs to reduce the clear width of accessible routes; and

(5) Have parking spaces and access aisles with surface slopes not exceeding 1:48 (1/4 inch per foot) in all directions.



accessible parking

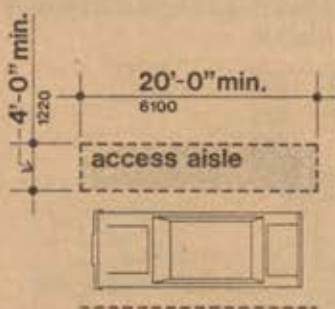
6.
1

(d) *Passenger loading zones.* Provide accessible passenger loading zones that:

(1) Have an access aisle at least 4'0" (1,220 mm) wide by 20'0" (6 m) long adjacent, parallel, and level with the vehicle standing space,

(2) Have curb ramps conforming to § 1190.70, Ramps and curb ramps, if there are curbs between the access aisle and other portions of the accessible route; and

(3) Have vehicle standing spaces and access aisles with surface slopes not exceeding 1:48 (1/4 inch per foot) in all directions (figure 6.2).



unloading zone

6.
2

(e) *Vertical clearance.* Provide minimum vertical clearances of 9'6" (3.45 m) at accessible parking spaces, at accessible passenger loading zones, and along vehicle access routes to such areas from site entrances. (f) *Signage.*

Signage reserving accessible parking spaces and identifying passenger loading zones and vehicle access routes shall comply with § 1190.200, Signage. Signage shall incorporate the International Symbol of Accessibility and shall not be obscured by a vehicle parked in the space (figures 20.1 and 20.2).

§ 1190.70 Ramps and curb ramps.

(a) *General.* Ramps and curb ramps required by Subpart C—Scope shall comply with this section.

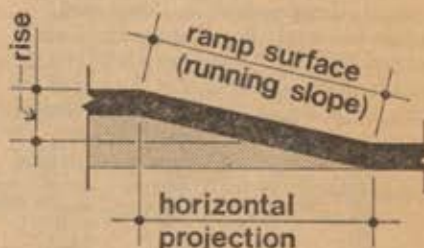
(b) *Slopes and rise.* Provide the least practical slope for any ramp or curb ramp subject to the following maximums:

(1) New Construction requirements:

(i) Maximum running slope shall not exceed 1:12 (8.3%) (fig. 7.1).

(ii) Maximum rise for any run shall not exceed 2'6" (760 mm) (fig. 7.2).

(iii) Maximum slopes of adjoining gutters, road surface, or accessible routes shall not exceed 1:20 and shall comply with § 1190.70(e)(8) (fig. 7.12).



ramp slope

7.
1

slope	maximum rise		maximum projection	
	in	mm	ft	m
1:12 \leq 1:16	30	760	30	9
1:16 \leq 1:20	30	760	40	12
1:20	30	760	50	15

maximum rise & projection

new construction

7.
2

(2) Existing construction requirements:

(i) If space limitations prevent compliance with paragraph 1190.70(b)(1), slopes and rises listed in figure 7.3 may be used.

(ii) [Reserved].

slope	maximum rise		maximum projection	
	in	mm	ft	m
1:10 to 1:8	3	75	2	0.6
1:12 to 1:10	6	150	5	1.5

maximum rise & projection

existing construction

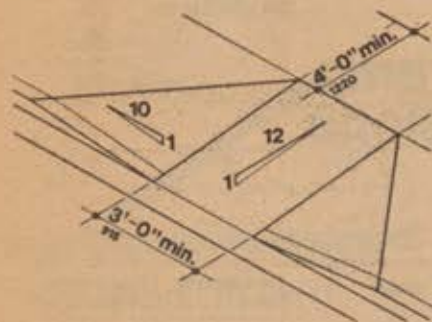
7.
3

(c) *Width.* Ramps and curb ramps shall have a minimum clear width of 3'0" (915 mm) exclusive of edge protection or flared sides.

(d) *Cross-slope and surface.* Cross-slope of ramp surfaces shall not exceed 1:48 (¼ inch per foot). Ramp surfaces shall comply with § 1190.50, walks, floors, and accessible routes.

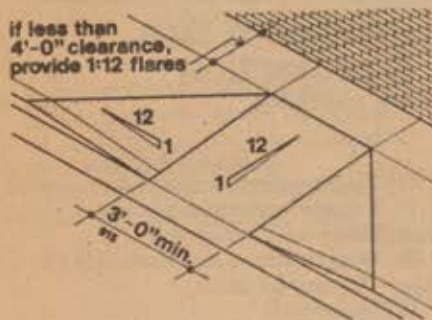
(e) *Curb ramps.* In addition to the requirements of paragraphs 1190.70(a), (b), and (c), curb ramps shall comply with the following requirements:

(1) Provide flared sides if ramps are located where pedestrians may walk across the ramp; flared slope shall not exceed 1:10 (fig. 7.4) where a 4'0" (1,220 mm) landing is provided at the top of the curb ramp. If less than 4'0" (1,220 mm) is provided, the flared slope shall not exceed 1:12 (fig. 7.5). Where pedestrians will not normally walk across a ramp, returned curbs may be used (fig. 7.6).



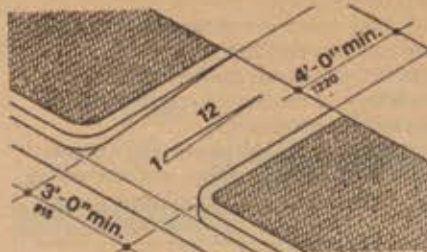
curb ramp

7.
4



curb ramp

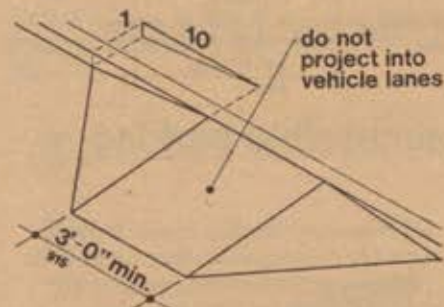
7.
5



curb ramp

7.
6

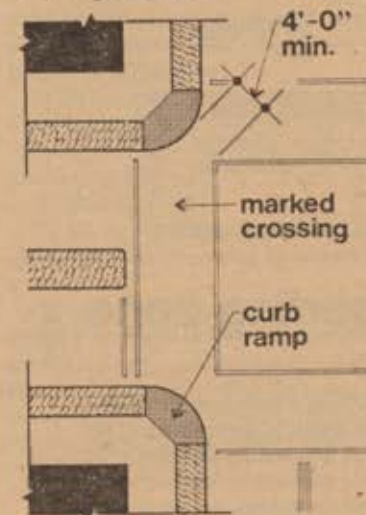
(2) Locate built-up curb ramps so that they do not project into vehicular traffic lanes (fig. 7.7).



curb ramp

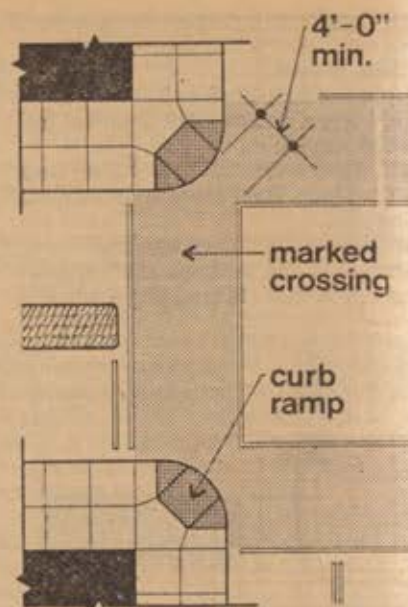
7.
7

(3) Diagonal or corner type curb ramps having returned curbs or well defined edges, shall have such edges parallel to the direction of pedestrian flow (fig. 7.8). Diagonal or corner type curb ramps having flared sides shall have at least a 2'0" (610 mm) long segment of straight curb located on each side of the curb ramp and within marked crossings (fig. 7.9).



crossing

7.
8



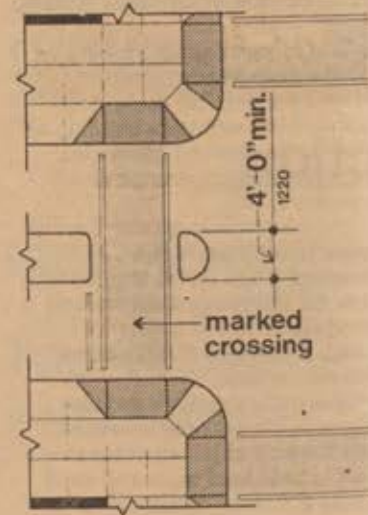
crossing

7.
9

(4) Curb ramp discharge (top and bottom) shall be to a 4'0" (1,220 mm) minimum deep clear space (figs. 7.4 and 7.5). If the marked crossings are provided, locate bottom discharge entirely within marked crossings (figs. 7.8 and 7.9).

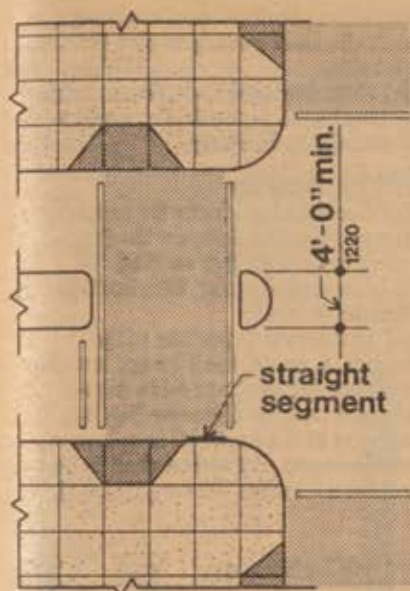
(5) Locate curb ramps to prevent blockage of discharge areas by parked vehicles.

(6) Cut any islands through flush with street surfaces or ramp each side to permit crossing. Provide 4'0" (1,220 mm) long rest area (see figs. 7.10 and 7.11).



crossing

7.
10

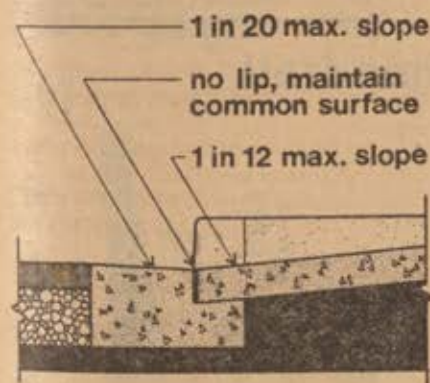


crossing

7.
11

(7) Curb ramps having less than a 6-inch (150 mm) rise do not require handrails.

(8) Transitions from ramps to walks, gutters, or streets shall be flush and free of abrupt changes (fig. 7.12).



section

7.
12

(f) *Ramps.* In addition to the requirements of § 1190.70(a), (b), (c) and (d) provide the following at all ramps:

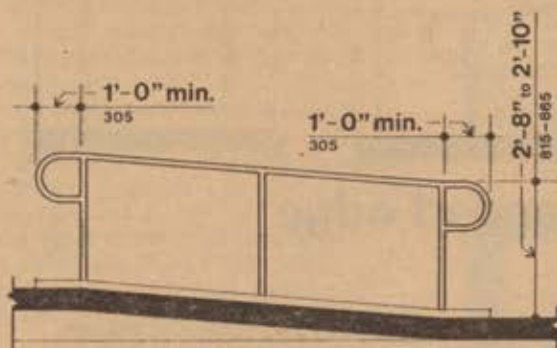
(1) Provide landings at the top, bottom, and at changes of direction. If ramp runs exceed maximum projection given in figures 7.2 and 7.3, provide intermediate landings. Landings shall:

(i) Have a width which shall be at least as wide as the widest ramp run approaching it.

- (ii) Have a minimum length of 5'0" (1,525 mm).
- (iii) Have a minimum size at direction changes that is 5'0" by 5'0" (1,525 mm by 1,525 mm).
- (iv) Shall comply with § 1190.130.

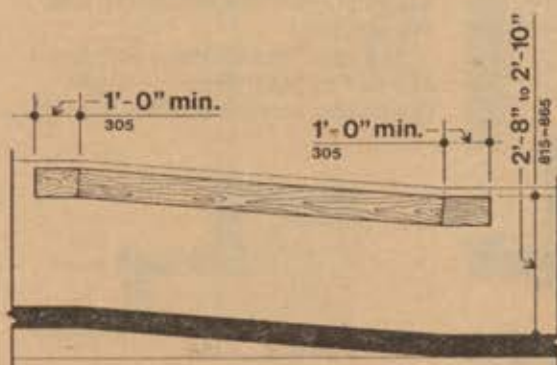
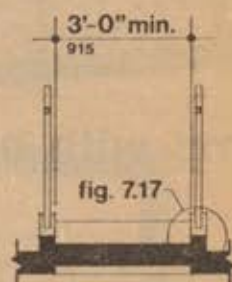
doors, if doors open into them.

(2) Provide handrails that comply with § 1190.90, handrails, on both sides of any ramp run exceeding a 6-inch (150 mm) rise or a 6'0" (1,830 mm) horizontal projection (figs. 7.13, 7.14, 7.15, and 7.16).



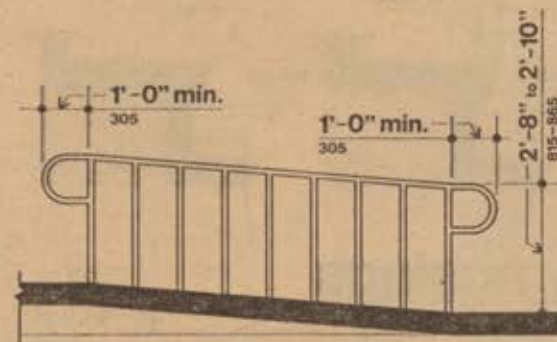
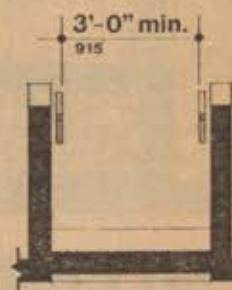
ramp with curb

7.
13



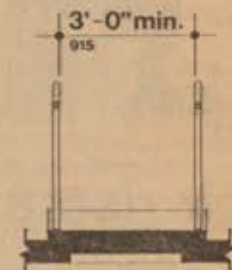
ramp with wall

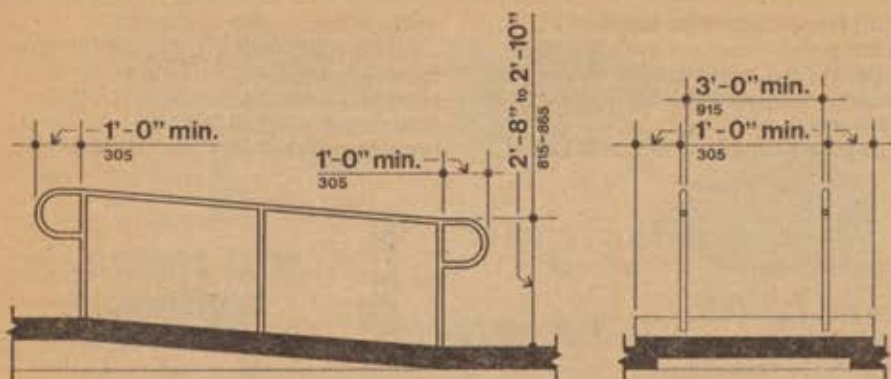
7.
14



ramp with vertical guard

7.
15

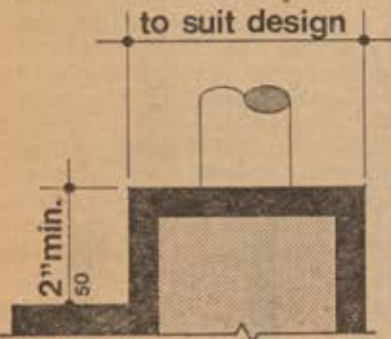




ramp with extended edge

7.
16

(3) Provide curbs, walls, vertical guards or projected edges at ramps and landings with drop-offs. Minimum curb height shall be 2 inches (50 mm) (fig. 7.17).



ramp curb

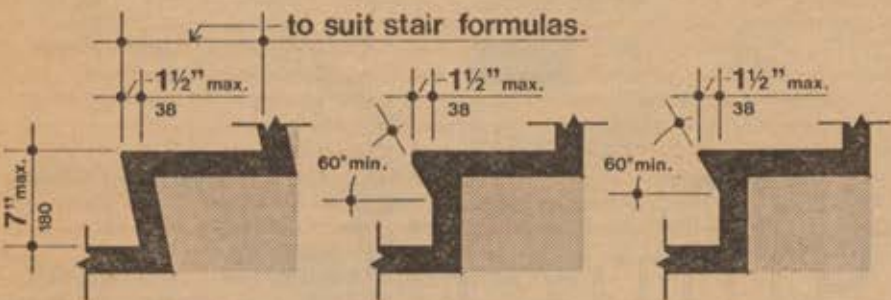
7.
17

(g) *Exterior condition.* Curb ramps, ramp, and landing surfaces shall comply with paragraph 1190.50(i)(2), drainage.

§ 1190.80 Stairs.

(a) *General.* Stairs required by Subpart C—Scope shall comply with this section.

(b) *Risers.* Provide risers that do not exceed 7 inches (180 mm) in height. Open risers are not permitted (fig. 8.1).



stair risers & nosings

8.
1

(c) *Nosings.* Nosings shall:

(1) Project a maximum of 1 1/2 inches (38 mm);

(2) Have a leading edge with a maximum radius of curvature of 1/2 inches (13 mm); and

(3) Be formed by risers that are sloped, or shall have undersides of the nosings which form an angle not less than 60 degrees from the horizontal (fig. 8.1).

(d) *Handrails.* Provide continuous

handrails at both sides of stairways. Handrails shall comply with § 1190.90, Handrails.

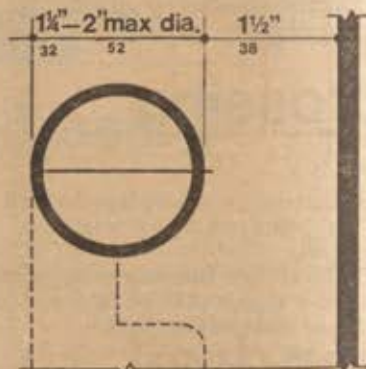
(e) *Exterior conditions.* Stair treads and landing surfaces shall comply with § 1190.50(i)(2), Drainage.

§ 1190.90 Handrails.

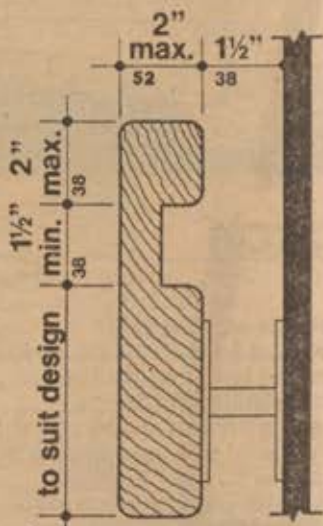
(a) *General.* Handrails for ramps or stairs required by Subpart C—Scope shall comply with this section.

(b) *Size and spacing.* Size and spacing of handrails shall:

(1) The handgrip portion of the handrail, if round, shall be not less than 1 1/4 inches (32 mm) nor more than 2 inches (50 mm) in diameter (fig. 9.1). If the shape of the handrail is not round, then the larger dimension shall be not more than 2 inches (50 mm) (fig. 9.2).



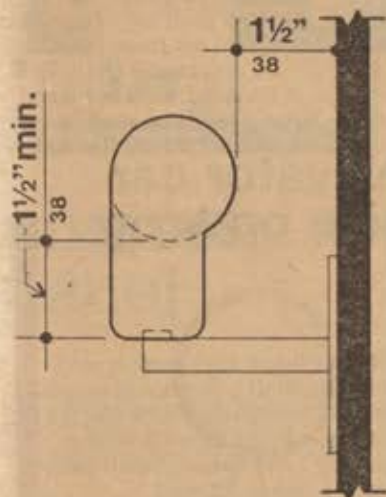
handrail

9.
1

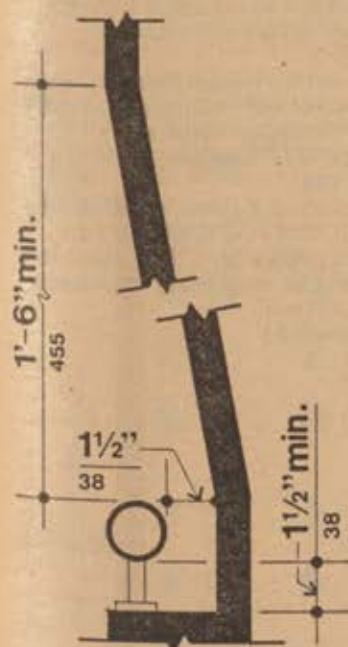
handrail

9.
2

(2) If handrails are mounted adjacent to walls or other surfaces, provide a $1\frac{1}{2}$ inch (38 mm) (minimum/maximum) clear space between the surface and the handrail (figs. 9.1, 9.2, 9.3, and 9.4). The handrail and the surfaces adjacent to the handrail shall be free of any sharp or abrasive elements. Edges shall have minimum radius of $\frac{1}{4}$ inch (3 mm). Freestanding rails located farther than 6 inches (150 mm) from wall or other vertical surfaces are not subject to this provision.



handrail

9.
3

handrail

9.
4

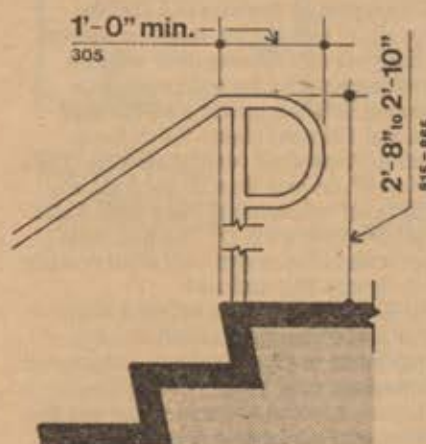
(3) Handrails may be mounted in recesses if the recesses comply with figure 9.4.

(4) On switchbacks or dogleg ramps or stairs, inside handrails shall be continuous.

(c) *Handrail projections.* (1) If outside handrails are not continuous, then:

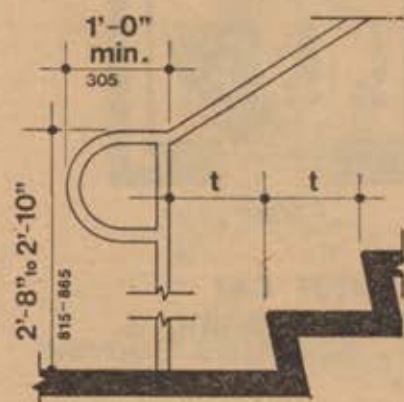
(i) At a ramp landing, handrails shall project parallel with ramp or landing surface for a length of 1'0" (305 mm) beyond the top and bottom of ramp surfaces (figs. 7.13, 7.14, 7.15, and 7.16).

(ii) At a stair landing, handrails shall project at least 1'0" (305 mm) beyond the top riser and at least 1'0" (305 mm) plus the depth of one tread beyond the bottom riser. The 1'0" (305 mm) projection shall in each instance be parallel with the floor (figs. 9.5 and 9.6).



extension

handrails

9.
5

extension

handrails

9.
6

(iii) *Exception.* Full extension of handrails shall not be required in alterations where such extensions would be hazardous or impossible due to plan configurations.

(2) Gripping surfaces shall not be interrupted with newel posts, balusters, or other obstructions.

(d) *Mounting height.* Mount handrails for accessible stairs and ramps at a height of 2'8" to 2'10" (815 mm to 865 mm) above stair nosing(s) or ramp surface as applicable (see figs. 7.13, 7.14, 7.15, 7.16, 9.6, and 9.7).

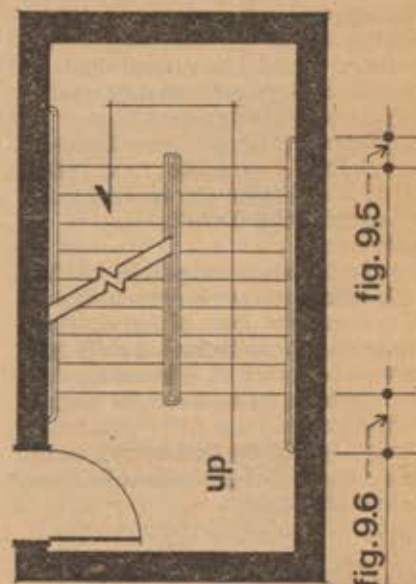


fig. 9.5

fig. 9.6

stairway

9.
7

(e) *Structural strengths.* Handrails, as installed, shall support a minimum momentary concentrated load applied at the top edge of 200 lbs. (91 kg) horizontally and 30 percent of that load vertically downward. Where the railing system is installed in public assembly occupancies, the loading shall be increased 50 percent.

Handrails shall not rotate within their fittings. Handrails of material other than metal shall meet the same structural requirements.

(f) *Hazards.* Ends of freestanding handrails shall be either rounded or returned smoothly to floor or post (see § 1190.50(c), Protruding objects.)

§ 1190.100 Elevators.

(a) *General.* (1) Elevators required by Subpart C—Scope shall comply with this section. For additional information see the *American National Standard Safety Code for Elevators*.

Dumbwaiters, Escalators and Moving Walks, A17.1, and see also National Elevator Industry, Inc. (NEII) *Suggested Minimum Elevator Requirements for the Handicapped*.

(2) Freight elevators shall not be considered as meeting the requirements of this section.

(b) *Operation and leveling.* Elevators shall be automatic and shall be provided with a self-leveling feature that will automatically bring the car to the floor landing within a tolerance of $\frac{1}{8}$ inch (3 mm) under normal loading and unloading conditions. The self-leveling feature shall, within its zone, be entirely automatic and independent of the operating device and shall correct for overtravel or under-travel and shall maintain the car approximately level irrespective of loading conditions.

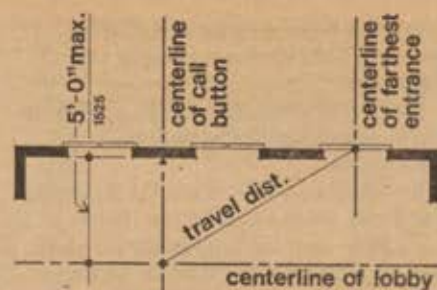
(c) *Elevator door operation.* Elevator doors shall be a minimum of 3'0" (915 mm) wide and automatic door controls shall comply with the following requirements:

(1) The minimum acceptable time from notification that a car is answering a hall call until the doors of that car start to close shall be as indicated in fig. 10.1. The travel distance shall be established from a point in the center of the corridor or lobby (maximum of 5'0" (1,525 mm)) directly opposite the farthest hall button to the centerline of the farthest hoistway entrance (fig. 10.2).

distance		time
ft	m	sec
0 to 5	1.5	5
10	3	7
15	4.5	10
20	6	13

door timing

10.
1



travel distance

10.
2

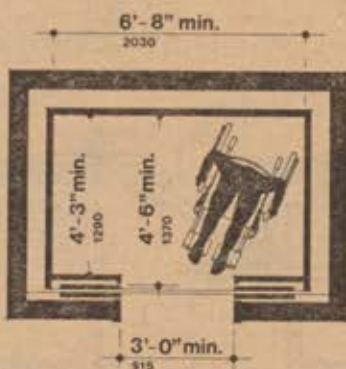
(2) Doors shall remain fully open for a minimum of 5 seconds.

(3) Provide doors with a reopening device which will function to stop and reopen the car door and adjacent hoistway door in case the car door is obstructed while the door is closing. This reopening device shall also be capable of sensing an object or person in the path of a closing door without requiring contact for activation at a nominal height 5 inches and 2'5" (125 mm and 735 mm) above finish floor. Such devices shall remain effective for a period of not less than 20 seconds. For additional information, see ANSI A17.1.

(d) *Elevator cars.* (1) The minimum floor areas of elevator cars shall comply with figures 10.3 and 10.4.

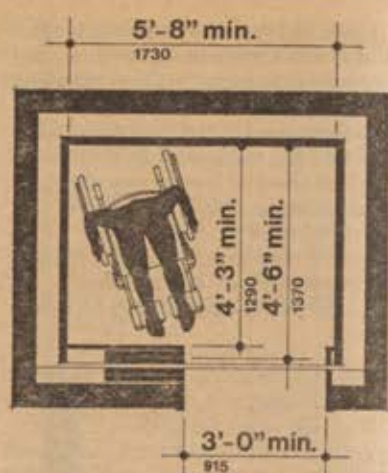
(i) *Exception.* Where existing shaft or structural elements prohibit strict compliance in alteration work, these dimensions may be reduced by the minimum amount necessary, but in no case shall they be less than 4'0" (1,220 mm by 1,220 mm) clear minimum car size.

(ii) [Reserved].



elevator car center opening

10.
3



elevator car side opening

10.
4

(2) Car floors shall comply with § 1190.50, Walks, floors and accessible routes. The clearance between the car platform sill and the edge of any hoistway landing shall be no greater than 1 1/4 inches (32 mm).

(3) Car controls shall be readily accessible from a wheelchair.

(i) Buttons, exclusive of border, shall have a minimum dimension of 3/4 inch (19 mm) and shall be raised or flush with the operating panel.

(ii) Provide a visual signal indicating when each call is registered and answered.

(iii) Mount the highest floor buttons at a maximum of 4'0" (1,220 mm) above the floor and the lowest buttons at a minimum of 2'11" (890 mm) above the floor (fig. 10.5).

(A) *Exception.* If there is a substantial increase in cost as a result of the 4'0" (1,220 mm) requirement, the highest floor buttons may be mounted at a maximum of 4'6" (1,370 mm).

(B) [Reserved.]

(vi) Locate control panels as shown in figures 10.7 and 10.8.



control locations

center opening

10.
7



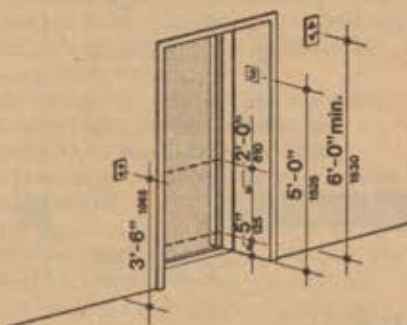
control locations

side opening

10.
8

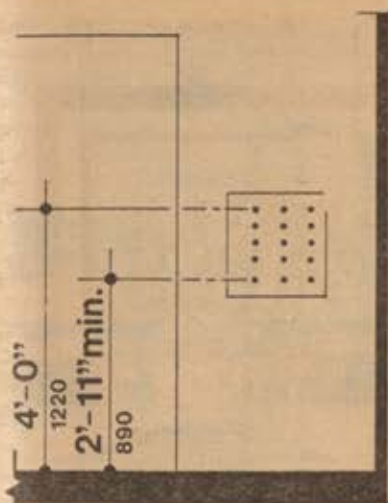
(e) *Door jamb markings.* Provide floor designation markings at each hoistway entrance on both jambs and that comply with the following:

- (1) The centerlines of characters shall be located 5'0" (1,525 mm) above finish floor; and
- (2) Characters shall be a minimum of 2 inches (50 mm) high and shall comply with § 1190.200, Signage.
- (3) Permanently applied plates are acceptable (fig. 10.9).



elevator entrance

10.
9

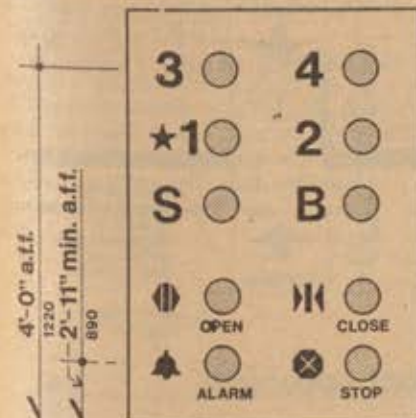


control panel

10.
5

(iv) Group emergency buttons at the bottom of the panel with their centerlines no lower than 2'11" (890 mm).

(v) Designate all control buttons by raised standard alphabet characters for letters, arabic characters for numerals, or standard symbols as shown in figure 10.6. For additional information see ANSI A17.1 and see also NEII *Suggested Minimum Elevator Requirements for the Handicapped*. Place raised designations to the immediate left of the button to which they apply. Permanently attached, applied plates are acceptable. Locate the call button for the main entry floor in the left-most column and designate it with a raised star as shown in figure 10.6.



elevator control panel

10.
6

(f) *Lobby call buttons.* (1) Call buttons shall:

- (i) Be mounted with centerlines at 3'6" (1,065 mm) above finish floor (fig. 10.9);
- (ii) Be a minimum of 3/4 inch (19 mm) in diameter;
- (iii) Have visual signals indicating when a call is registered and answered;
- (iv) Be raised or flush; and
- (v) Have the button designating "up" mounted on top.

(2) Objects mounted beneath lobby call buttons shall not project into the elevator lobby more than 4 inches (100 mm).

(g) *Hall lanterns.* Provide an audible and visual signal at each hoistway entrance to indicate car arrival and its travel direction.

(1) Audible signals shall sound once for the up direction and twice for the down direction or shall announce the words "up" or "down."

(2) Visual signals shall:

(i) Be mounted with their centerlines a minimum of 6'0" (1,830 mm) above finish floor (fig. 10.9);

(ii) Have a minimum dimension of 2 1/2" (64 mm);

(iii) Distinguish between up and down travel directions; and

(iv) Be visible from the vicinity of call buttons.

(3) In-car lanterns mounted on car door jambs and that comply with § 1190.100(e)(2) are acceptable.

(h) Car position indicator and signal. Provide audible and visual car position indicators within each elevator car as follows:

(1) Audible indicators shall:

(i) Signal as the car passes or stops at each landing. Signal shall exceed the ambient noise level by at least 20 decibels with a frequency below 1,500 Hz; or

(ii) Provide an automatic verbal announcement.

(2) Visual indicators shall:

(i) Be located above the car operating panel or over the car door;

(ii) Visually display the floor number as the car passes or stops at a landing;

(iii) Have characters that are a minimum of 1/2 inches (13 mm) high and that comply with § 1190.200, Signage, except for § 1190.100(c)(2).

(i) *Illumination levels.* Illuminate car controls, platform, car threshold, and landing sill to a minimum of 5 footcandles.

(j) *Intercommunication systems.* If provided, emergency intercommunication systems shall comply with the following:

(1) Locate the highest operable part of the system no higher than 4'0" (1,220 mm) above car floor;

(2) Identify the system with raised lettering or symbols complying with § 1190.200, Signage;

(3) If system employs a handset, provide a 2'5" (735 mm) cord length;

(4) If system is located in a closed compartment, compartment door hardware shall conform to § 1190.170, Controls, and operating mechanisms;

(5) Provide a momentary contact button to allow hearing-impaired individuals to summon assistance.

§ 1190.110 Platform lifts.

(a) *General.* Platform lifts required by Subpart C—Scope, shall comply with this section.

(b) *Requirements.* Platform lifts shall:

(1) Accommodate an occupied wheelchair within the space provisions of § 1190.40, Human data;

(2) Facilitate unassisted entry and exit from the lift in accordance with the provisions of § 1190.50, Walks, floors, and accessible routes;

(3) Have accessible controls complying with § 1190.170, Controls and operating mechanisms; and

(4) Satisfy safety requirements of the agency having responsibility for safety of the facility.

§ 1190.120 Entrances.

(a) *General.* Entrances required to be accessible by Subpart C—Scope shall comply with § 1190.50, Walks, Floors and Accessible Routes; § 1190.120, Entrances; and § 1190.130, Doors.

(b) *Service entrances.* A service entrance is not to be used as the only accessible entrance unless it is the only entrance to the building or facility.

(c) *Access to elevators.* If elevators are provided, an accessible route shall be provided from an accessible entrance to the elevators.

§ 1190.130 Doors.

(a) *General.* Doors required to be accessible by Subpart C—Scope shall comply with this section.

(1) Gates, including ticket gates, shall comply with this section.

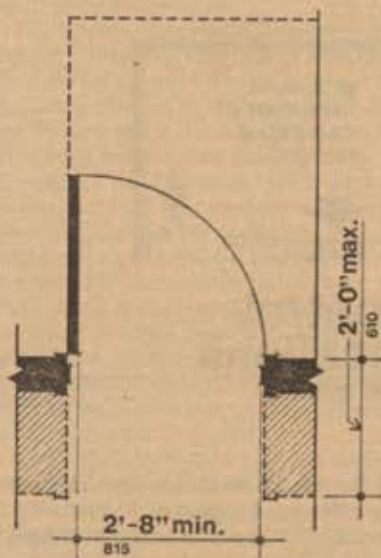
(2) In double-leaf doorways, at least one leaf shall comply with this Section and it shall be the active leaf. Double-leaf automatic doors are excepted from the one leaf provision if both leaves are automatic.

(3) Revolving doors or turnstiles are not accessible doors and shall not be the sole means of access at any accessible entrance or on any accessible route. An accessible door shall be provided immediately adjacent to the turnstile or revolving door and shall be subject to the same use pattern as the turnstile or revolving door.

(b) *Clear width.* Provide doorways with clear openings of 2'8" (815 mm) as measured with the door open 90 degrees between the face of the door and the latch side stop (figs. 13.1, 13.2, and 13.3). Openings deeper than 2'0" (610 mm) shall be a minimum of 3'0" (915 mm) wide (fig. 4.1).

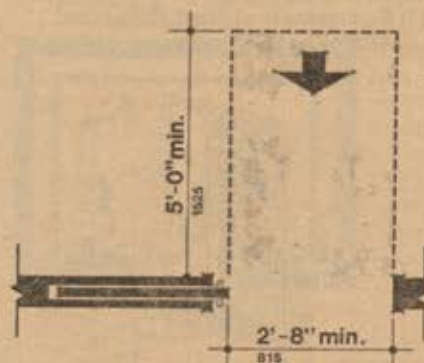
(1) *Exception.* If a space and the elements within that space comply with the requirements of § 1190.40, Human Data, and the user does not require full passage into that space, then the opening to that space may be a minimum of 1'8" (510 mm) wide.

(2) [Reserved]



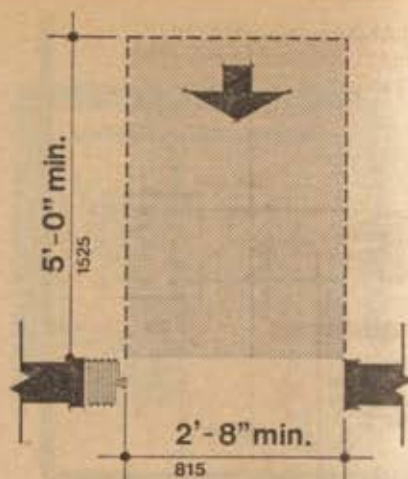
hinged

13.
1



sliding

13.
2



folding

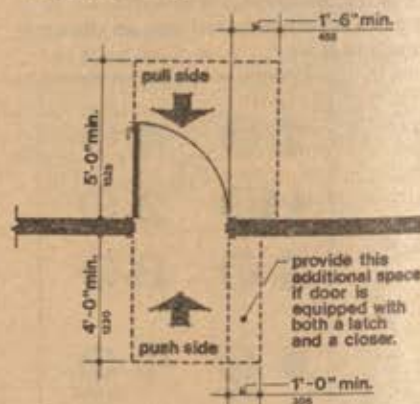
13.
3

(c) *Maneuvering space.* Provide the following space at all non-automatic and non-power-assisted doors:

(1) At doors allowing front approach only, maneuvering space shall be as shown in figures 13.2, 13.3, and 13.4. The minimum maneuvering space (*i.e.*, latch side clearance) required for a hinged opening is 1'6" (455 mm), but 2'0" (600 mm) is recommended where space is available.

(i) *Exception.* Front approach entry doors to acute care hospital patient bedrooms shall be exempt from the 1'6" (455 mm) requirement of § 1190.130(c)(1) latch side clearance shown in figure 13.4 if the door is at least 3'8" (1,120 mm) wide.

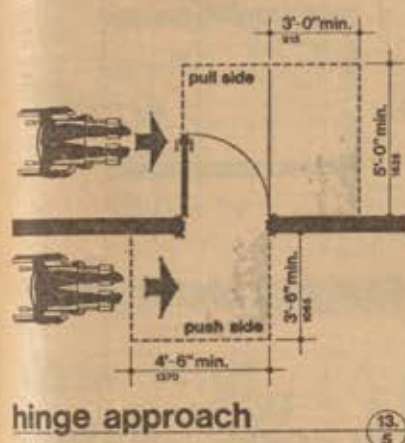
(ii) [Reserved]



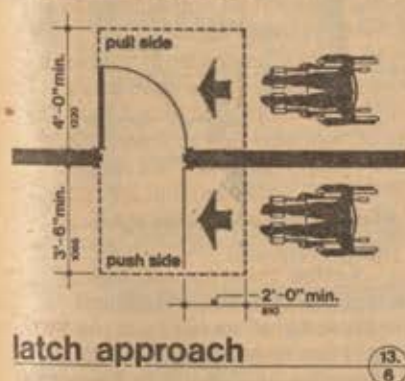
front approach

13.
4

(2) At doors allowing hinge side approach only, maneuvering space shall be as shown in figure 13.5.

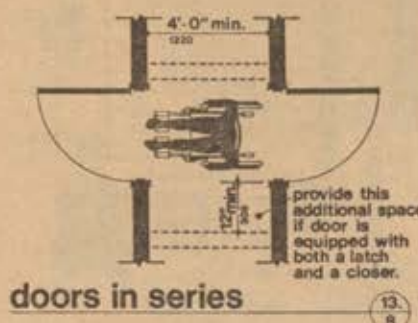
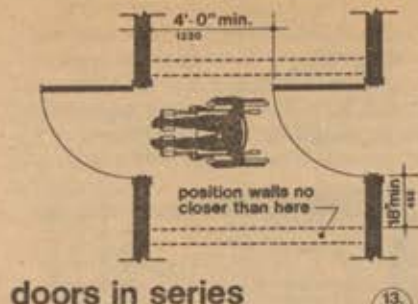


(3) At doors allowing latch side approach only, maneuvering space shall be as shown in figure 13.6.



(4) The floor or surface area within the required maneuvering space shall be clear and shall comply with § 1190.50(i). Ground and floor surfaces. It shall have a slope in any direction no greater than 1:48 (¼ inch per foot).

(d) *Doors in series.* Between any two hinged or pivoted doors in series, provide a minimum of 4'0" (1,220 mm) plus the width of any door swinging into the space. Opposing doors shall not swing towards each other, into the intervening space (see figs. 13.7 and 13.8).



(e) *Thresholds.* Raised thresholds, if provided, shall be beveled with a slope not to exceed 1:2 and with heights not exceeding the following:

(1) Exterior sliding doors: ¾ inch (19 mm) maximum.

(2) Other doors: ½ inch (13 mm) maximum. Bevel not required if less than ¼ inch (6 mm).

(f) *Hardware.* Provide handles, pulls, latches, locks and other operating hardware that are easy to grasp with one hand and that do not require twisting of the wrist, tight grasping, or tight pinching to operate. Acceptable designs include, but are not limited to, lever-operated hardware, push-type hardware, and U-shaped handles. Operating hardware shall be exposed and usable from both sides when sliding doors are fully open. Mount no operating hardware higher than 4'0" (1,220 mm) above finish floor.

(1) *Exception.* Mortise and surface mounted bolts used to secure the inactive leaf of a double leaf door without center mullion may be mounted at any height.

(2) [Reserved]

(g) *Doors to hazardous areas.* Provide a textured surface on any door handle, knob, pull, or other piece of operating hardware on doors that lead to areas that may prove hazardous to blind

people. Such areas may include, but are not limited to, loading platforms, mechanical equipment rooms, stages, and similar spaces. Textured surfaces may be achieved by knurling, roughening, or applying materials on the hand contact surface. Do not provide textured surfaces on hardware leading to emergency egress or on any doors other than those leading to hazardous areas.

(h) *Closers and opening forces.* (1) Door closers, if provided, shall have a sweep period adjusted so that from a position of 70 degrees open it will take the door a minimum of 5 seconds to reach a point 3 inches (75 mm) from the door jamb, measured from the leading edge of the door.

(2) Maximum pushing or pulling opening forces for doors shall be as follows:

- (i) Exterior hinged doors: [Reserved]
- (ii) Interior hinged doors: 5 lbs (2.3 Kg)
- (iii) Sliding or folding doors: 5 lbs (2.3 Kg)

(iv) Adjust fire doors for the minimum opening and closing forces required by the agency having responsibility for the safety of the facility.

(v) *Power-assisted doors:* Comply with paragraph 1190.130(g)(2) for closing force. These forces do not apply to forces required to retract or disengage latch bolts or other latching devices.

(i) *Automatic doors.* If automatic pedestrian doors are provided:

(1) They shall not open to back check in less than 5 seconds; and

(2) They shall not require more than 15 lbs (6.8 Kg) to stop door movement;

(3) See the *American National Standard for Power-Operated Pedestrian Doors*, ANSI A156.10 (latest edition) for additional information on the requirements for both standard and custom designed installations. Paragraph 1.1.1 of the ANSI publication contains information on slow opening, low powered automatic pedestrian doors.

§ 1190.140 Windows [Reserved]

§ 1190.150 Toilet and bathing facilities.

(a) *General.* Toilet rooms and bathing facilities required to be accessible by Subpart C—Scope shall comply with this section.

(1) *Exception.* Where alterations to existing facilities make strict compliance with § 1190.150 structurally impracticable, the addition of one

"unisex" toilet per floor containing one water closet and one lavatory that complies with § 1190.150(b) located adjacent to existing facilities will be acceptable in lieu of making existing toilet facilities for each sex accessible.

(2) [Reserved]

(b) *Doors.* Doors to toilet rooms and bathing facilities shall:

(1) Comply with § 1190.130, Doors; and

(2) Not swing into clear floor spaces required at fixtures.

(c) *Clear turning space.* Each accessible toilet room and bathing facility shall have an unobstructed turning space that:

(1) Complies with § 1190.40(b)(3);

(2) Adjoins an accessible route complying with § 1190.50, Walks, floors, and accessible routes; and

(3) May overlap the accessible route and clear floor space at fixture(s).

(i) *Exception.* In toilet rooms with one water closet, doors in a clear floor area that is 2'8" by 5'0" (815 mm by 1525 mm) may be provided in lieu of a clear turning space.

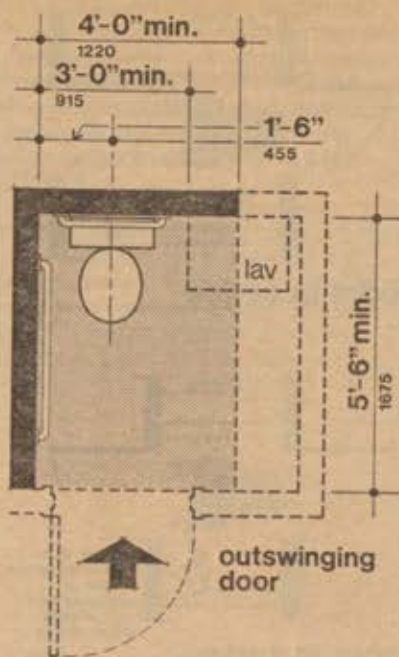
(ii) [Reserved]

(d) *Signage.* Signage required by Subpart C—Scope that identifies accessible toilet rooms and bathing facilities shall comply with § 1190.200, Signage.

(e) *Toilet fixtures and accessories—*

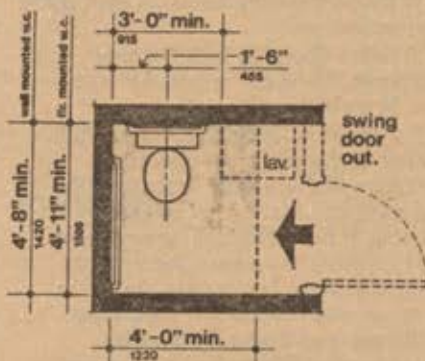
(1) *Water closets.* Accessible water closets shall:

(i) Be provided with clear floor access spaces complying with figures 15.1, 15.2, 15.3 and 15.4 for fixtures not mounted in stalls. Clear floor space may be provided to allow either left-handed or right-handed approach.



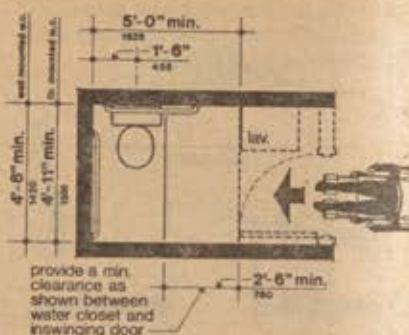
clear floor space
(right-hand approach)

15.1



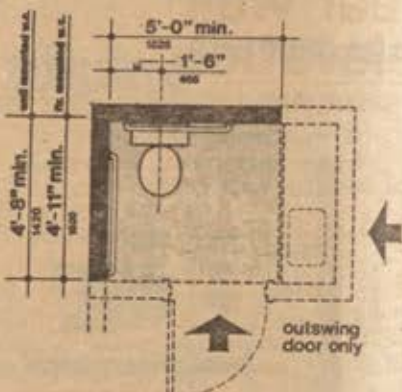
clear floor space
(right-hand approach)

15.2



clear floor space
(right-hand approach)

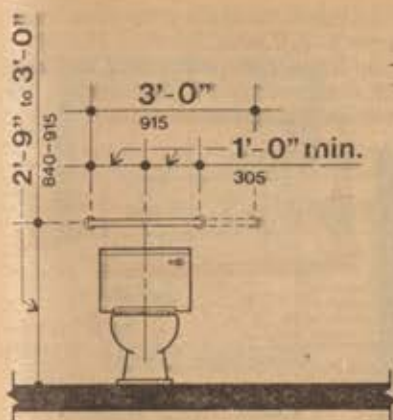
15.3



clear floor space
(right-hand approach)

15.4

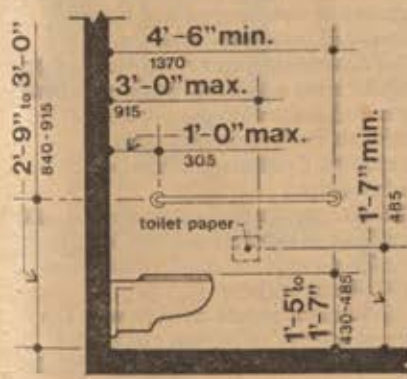
(ii) Have top of seats mounted 1'5" to 1'7" (430 mm to 485 mm) above finish floor (see figs. 15.5 and 15.6). Seats shall not be sprung to return to a lifted position when not in use.



rear wall
elevation

without stall

15.
5



side wall

without stall
or alternate stall

15.
6

(iii) Have automatic or hand-operated flush controls complying with § 1190.170. Controls and operating mechanisms. Mount controls for use from the wide side of access area and no higher than 3'8" (1,120 mm) above finish floor.

(iv) Have toilet paper dispensers mounted as shown in figure 15.6. Do not use dispensers that control delivery or that do not permit continuous paper flow.

(v) Have grab bars mounted of the length and positioning as shown in figures 15.1, 15.2, 15.3, 15.4, 15.5, and 15.6.

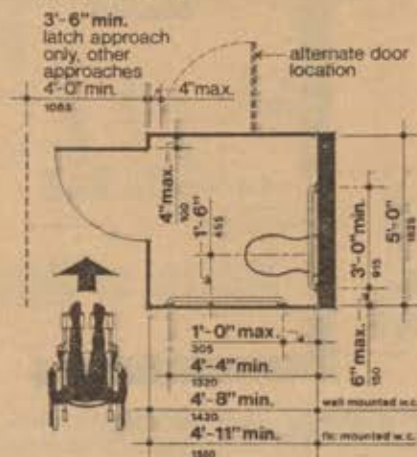
(2) *Toilet stalls.* Accessible toilet stalls shall:

(i) Have a water closet complying with § 1190.150(b)(1); and

(ii) Be of the size and arrangement as shown in figure 15.7. Stall configuration may be reversed for left or right-handed approach.

(A) *Exception.* In instances of alteration work where provision of a standard stall (fig. 15.7) is structurally impractical or plumbing fixture code requirements prevent combining existing stalls to provide space, an alternate stall (fig. 15.8) may be provided in lieu of the standard stall.

(B) [Reserved]



standard stall

(left-hand approach)

15.
7

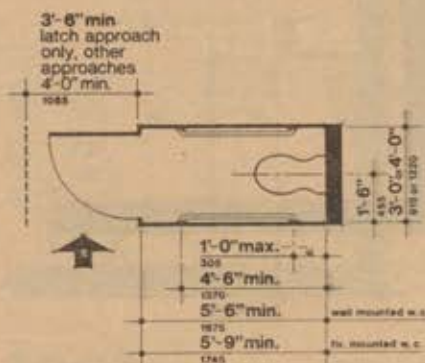
(iii) Have toe clearances at the front partition and at least one side partition of 9 inches (230 mm) above finish floor. If stall depth is greater than 5'0" (1,525 mm), then toe clearance is optional.

(iv) Have doors that comply with § 1190.130, Doors, and that are outswinging; and have the symbol of access affixed to the outside of door.

(A) *Exception.* If toilet stall approach is from the latch side of the stall door, clearance between the door side of the stall and any obstruction may be reduced to a minimum of 3'6" (1,065 mm).

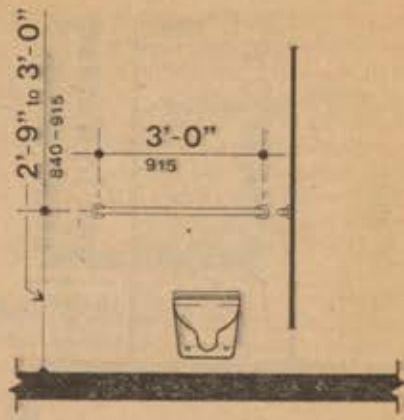
(b) [Reserved]

(v) Have grab bars mounted of the length and positioning shown in figures 15.7, 15.8, 15.9, and 15.10



alternate stall

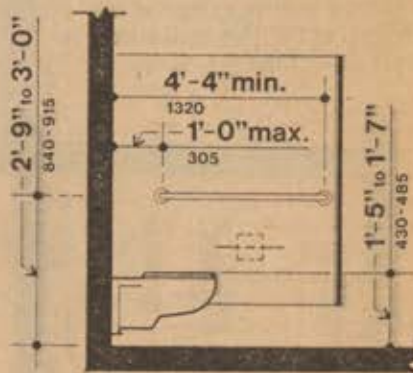
15.
8



rear wall
elevation

standard stall

15.
9



side wall

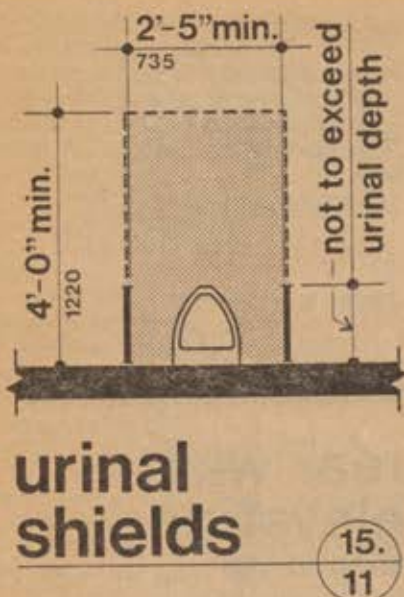
standard stall

15.
10

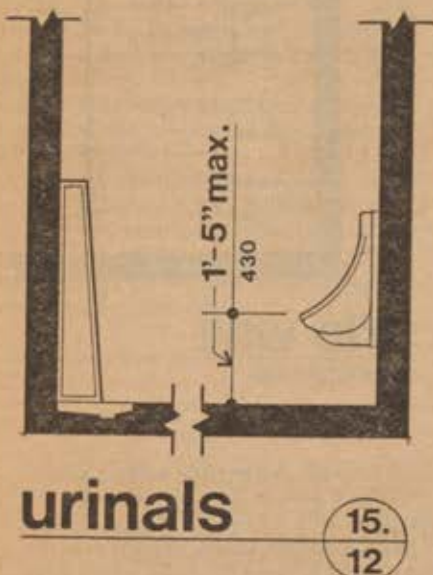
(3) *Urinals.* Accessible urinals shall: (i) Have a clear floor space that complies with § 1190.40, Human data.

(A) *Exception.* Urinal shields that do not extend beyond the front edge of the urinal rim may be provided with 2'5" (735 mm) clearance between them (fig. 15.11).

(B) [Reserved]



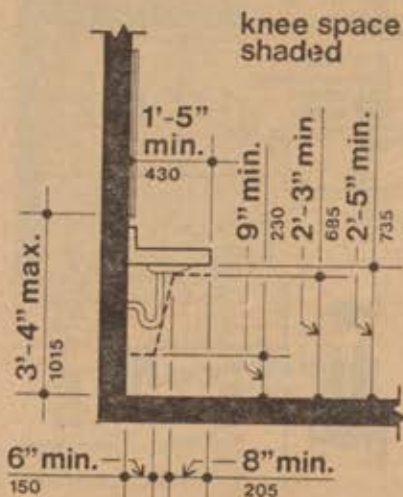
(ii) Be floor mounted stall type or wall-hung with an elongated rim mounted at 1'5" (430 mm) maximum above finish floor (fig. 15.12).



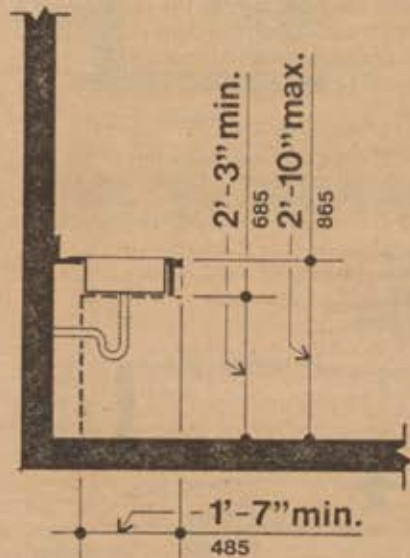
(iii) Have automatic or hand-operated controls complying with § 1190.170, Controls and operating mechanisms, and mounted no higher than 3'8" (1,120 mm) above finish floor.

(4) Lavatories and sinks. Lavatories and sinks shall meet the following requirements:

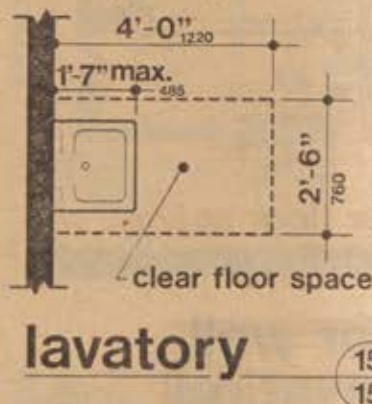
(i) Mount lavatories with the rim or counter surface no higher than 2'10" (865 mm) above finish floor. Provide knee space between bottom of apron and finish floor of at least 2'5" (735 mm) high, 2'6" (760 mm) wide and 1'7" (485 mm) deep (fig. 15.13).



(ii) Mount sinks with the rim or counter surface no higher than 2'10" (865 mm) above finish floor. Provide knee space under the sink of at least 2'3" (685 mm) high, 2'6" (760 mm) wide and 1'7" (485 mm) deep. Sink bowls shall be a maximum of 6½ inches (165 mm) deep (fig. 15.14).



(iii) Clear floor space permitting front approach shall comply with § 1190.40, Human Data. Clear floor space and knee space shall overlap 1'7" (485 mm) maximum (fig. 15.15).



(iv) Insulate or cover hot water and drain lines. Allow no sharp or abrasive surfaces to remain exposed under accessible lavatories or sinks.

(v) Acceptable faucet control designs include lever-operated, push type, touch-type, and electronically controlled mechanisms that comply with § 1190.170, Controls and operating mechanisms.

(A) Exception. Self-closing valves are permitted at lavatories if the faucet remains open for at least 10 seconds.

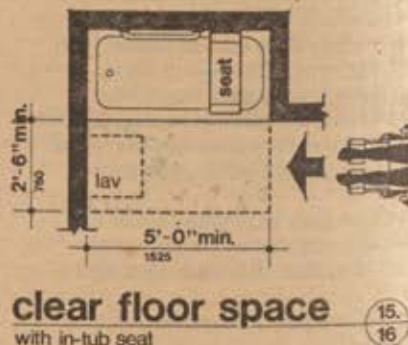
(B) [Reserved]

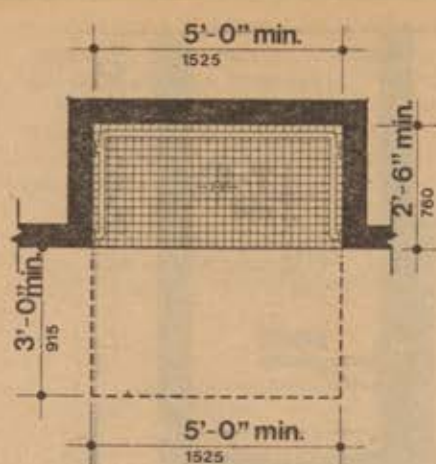
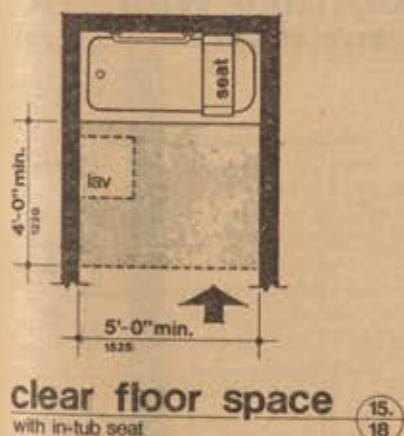
(5) Mirrors. Mount mirrors with the bottom edge of reflecting surface no higher than 3'4" (1,015 mm) above finish floor (fig. 15.13).

(6) Controls, dispensers, receptacles, or other equipment. Accessible equipment shall comply with § 1190.70, Controls and operating mechanisms.

(f) Bathing facilities. Bathtubs or showers shall:

(1) Have clear access space as shown in figures 15.16 to 15.20.

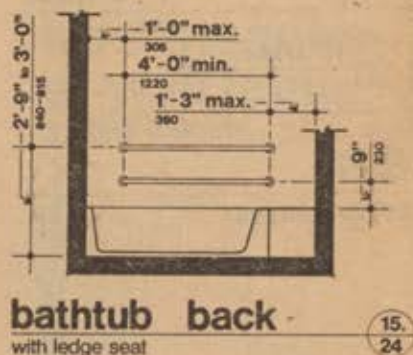
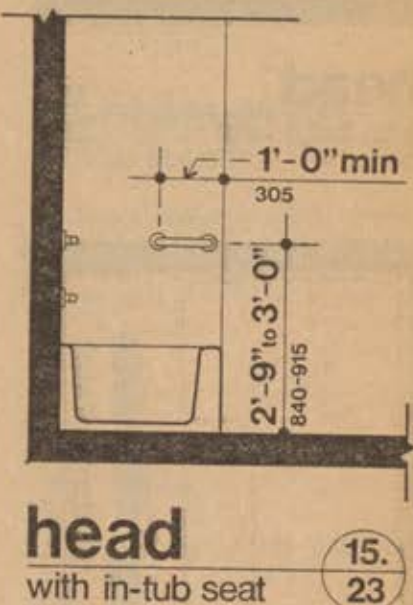
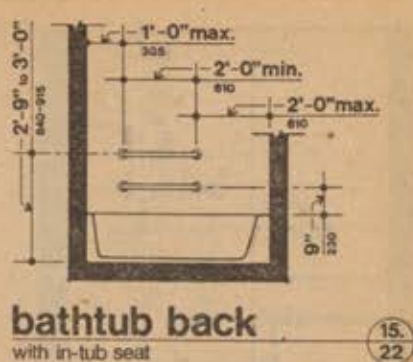
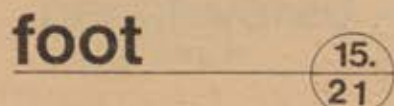
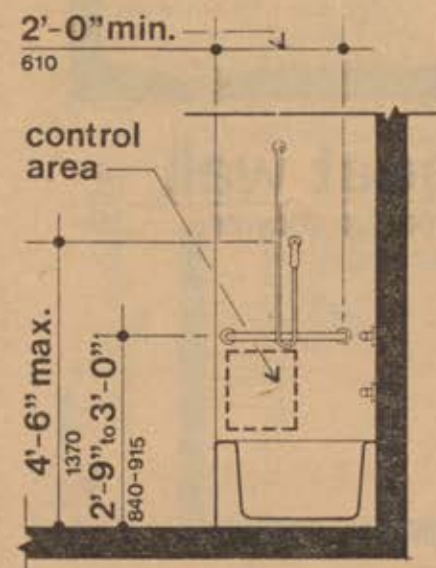


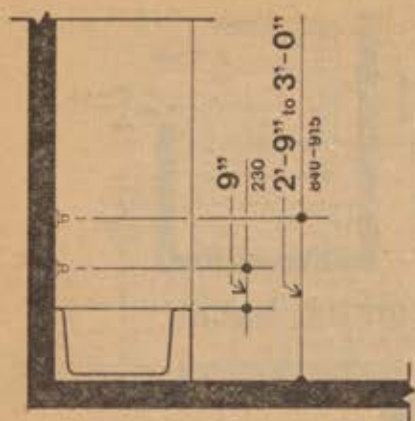


(2) Have seats provided as shown in figures 15.16 to 15.19, 15.24 and 15.26 to 15.28. Seats and their attachments shall safely support a 250 lbs (114 Kg) continuous live load without sustaining permanent deflection. Seats shall not move when mounted during use. In-tub seats shall be portable.

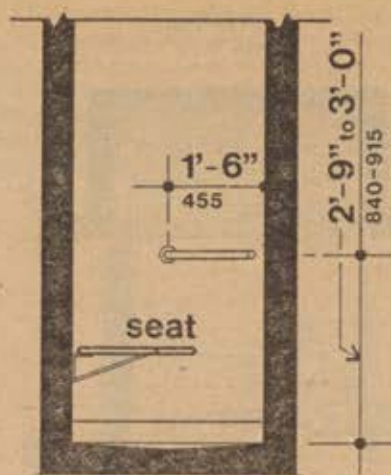
(3) Have grab bars mounted of the length and positioning shown in figures 15.16 to 15.32.

(4) Have faucets and controls complying with § 1190.170, Controls and Operating Mechanisms, located as shown in figures 15.21, 15.29, and 15.31.

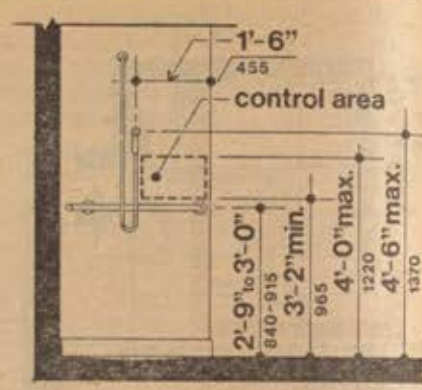


**head**

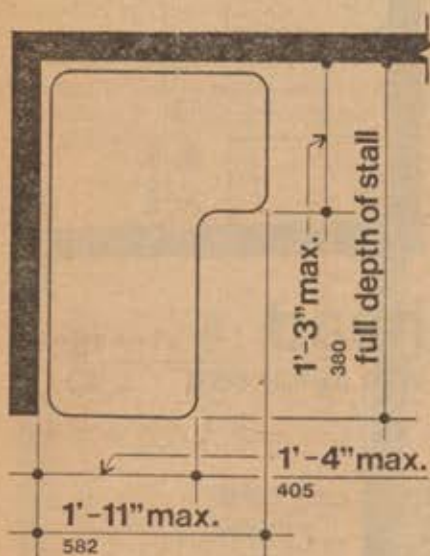
with ledge seat

15.
25**back**

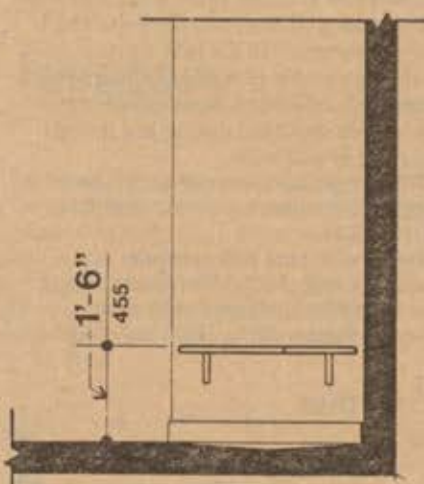
transfer shower

15.
27**control wall**

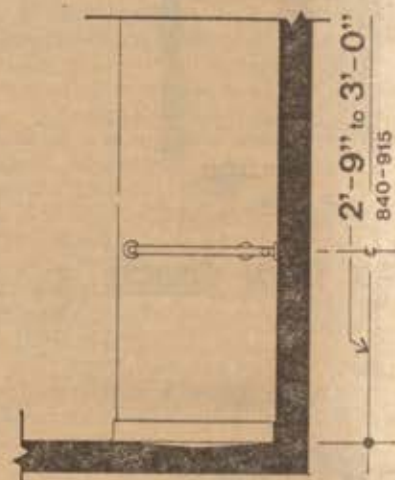
transfer shower

15.
29**seat**

transfer shower

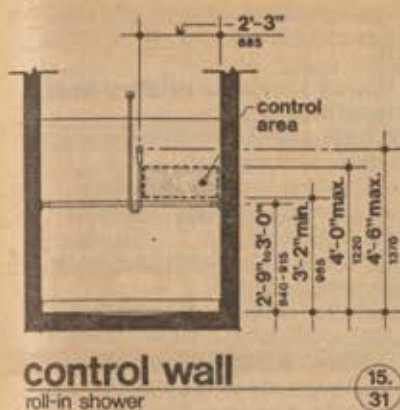
15.
26**seat wall**

transfer shower

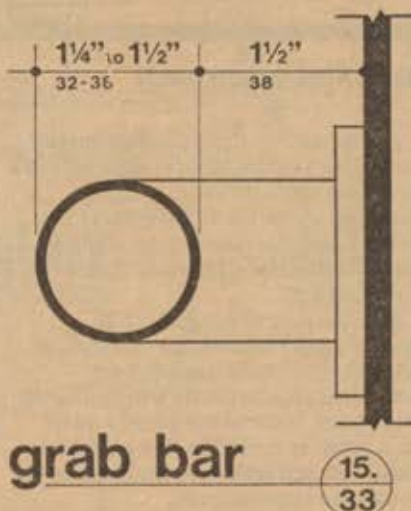
15.
28**side**

roll-in shower

15.
30



- (1) Have a diameter or width of the gripping surfaces that is 1 1/4 inches to 1 1/2 inches (32 mm to 38 mm).
(2) Have a 1 1/2 inch (38 mm) (maximum/minimum) clear space between the bar and the mounting surface (fig. 15.33).



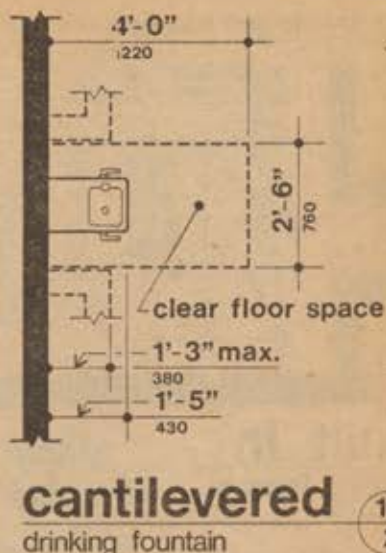
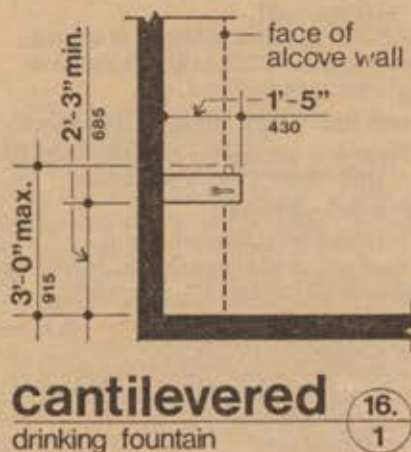
- (3) As installed, support a minimum concentrated load of 250 lb. (114 Kg).
(4) Not rotate in their fittings.

§ 1190.160 Drinking fountains and water coolers.

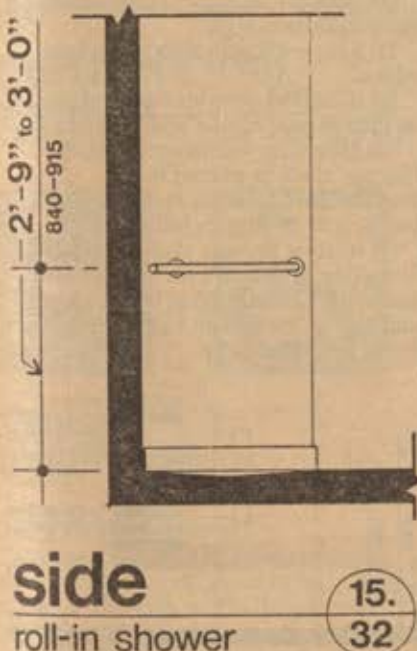
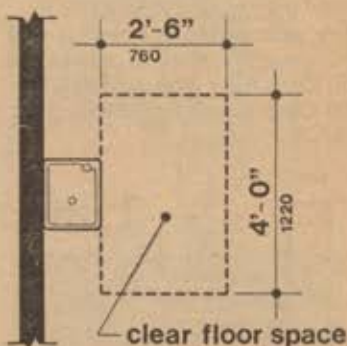
(a) *General.* Drinking fountains and coolers required by Suppart C—Scope shall comply with this section.

(b) *Clearances.* Drinking fountains and water coolers shall have clear floor or ground spaces that comply with § 1190.40, Human data, and shall be:

- (1) Cantilevered units with a clear space allowing a forward approach and having a knee space under the unit that is at least 2'3" (685 mm) high, 2'6" (760 mm) wide, and 1'5" (202 mm) deep (figs. 16.1 and 16.2); or



- (2) Free-standing or built-in units with a clear space allowing a parallel approach and not having knee-space (figs. 16.3 and 16.4 and 16.5).



- (5) Have a shower spray unit with a flexible hose a minimum of 5'0" (1,525 mm) long that is usable as a fixed shower head and as a hand-held shower.

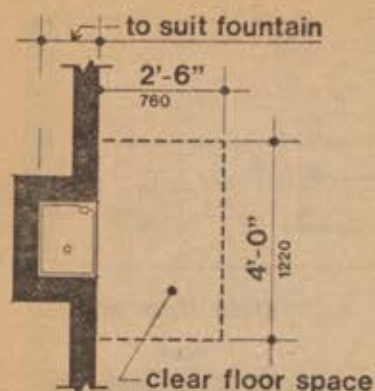
(i) *Exception.* In unmonitored facilities where vandalism is a concern, a fixed shower head mounted at 4'0" (1,220 mm) above the tub bottom may be used in lieu of the hand-held unit.

(ii) [Reserved]

(6) Have enclosures, if provided, that do not obstruct transfer from wheelchairs onto seats or into tubs or access to controls from clear floor spaces. Bathtub enclosures shall not have tracks mounted on the bathtub rims.

(7) Have shower curbs or thresholds no higher than 1/2 inch (13 mm) beveled.

(g) *Grab bars.* Grab bars for accessible toilet and bathing fixtures shall:



built in
drinking fountain

16.
5

(c) *Spouts of drinking fountains and water-coolers.* Spouts shall:

(1) Be mounted no higher than 3'0" (915 mm) above the finish floor, measured to the spout outlet.

(2) Be at the front of the unit and shall direct water flow trajectory parallel or nearly parallel the front of the unit.

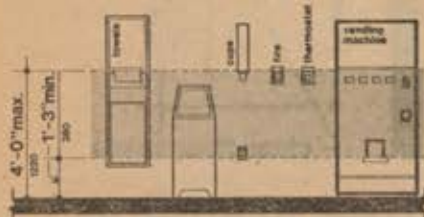
(3) Direct water flow at least 4 inches (100 mm) above the unit basin to facilitate cup or glass insertion.

(d) *Controls.* Unit control shall be front mounted or side mounted near the front edge and shall comply with § 1190.170, Controls and operating mechanisms.

§ 1190.170 Controls and operating mechanisms.

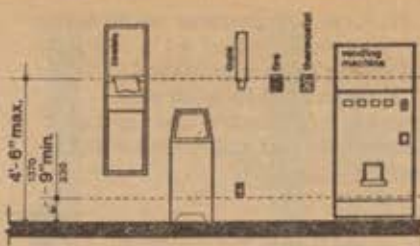
(a) *General.* Controls and operating mechanisms required to be accessible by Subpart C—Scope shall comply with this section.

(b) *Location requirements.* Controls and operating mechanisms shall adjoin clear floor or ground space complying with § 1190.40, Human data. Mount controls and operating mechanisms in compliance with approach direction and reach limitations specified in paragraphs 1190.40(c), Clear floor or ground space, and § 1190.40(d), Reach limitations (figs. 17.1 and 17.2).



forward approach

17.
1



parallel approach

17.
2

(c) *Operation.* Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbs. of force (2.2 Kg).

(d) *Specialized equipment.* If specialized mechanical, electrical, or process equipment has inherent functional requirements which dictate location or force requirements other than those specified in this section, locate the equipment as dictated by its functional requirements.

§ 1190.180 Alarms.

(a) *General.* Alarm systems required to be accessible by Subpart C—Scope shall comply with this section.

(b) *Audible alarms.* Audible alarms shall produce a sound pressure level that exceeds ambient room or space noise by 15 decibels or any maximum noise level of 30 seconds duration by 5 decibels, whichever is greater.

(c) *Visual and other sensory alarms.* If audible alarms are provided, then in addition, provide a visual alarm device adjacent to or within each exit sign which flashes in conjunction with audible alarms and operates from the same power source. Flash frequency of visual alarms shall be less than 5 Hz.

(1) *Exception.* Specialized systems utilizing advanced technology will be considered on a case-by-case basis.

(2) [Reserved]

(d) *Pull Stations.* Alarm pull stations shall comply with § 1190.170, Controls and operating mechanisms.

§ 1190.190 Tactile Warnings. [Reserved]

Note.—For information on tactile warnings, see ANSI A117-1 (1980), Section 4.29.

§ 1190.200 Signage.

(a) *General.* Information and identification of elements and spaces as required by Subpart C—Scope shall comply with this section.

(1) *Exception.* The provisions of § 1190.200(c) are not mandatory for temporary information on room and space signage.

(2) [Reserved]

(b) *Character proportion and contrast.* Letters and numbers on sign systems shall:

(1) Have a width-to-height ratio of between 3:5 and 1:1.

(2) Have a stroke width-to-height ratio of between 1:5 and 1:10.

(3) Contrast in value with their backgrounds, preferably light letters on a dark background.

(4) Have a matte finish on a matte finish background.

(c) *Raised or incised characters.* Provide numbers and letters that are:

(1) Raised or incised from the background surface $\frac{1}{32}$ inch (0.8 mm). Also incise or raise symbols and pictographs in this manner.

(2) Between $\frac{3}{16}$ inch (16 mm) and 2 inches (50 mm) high.

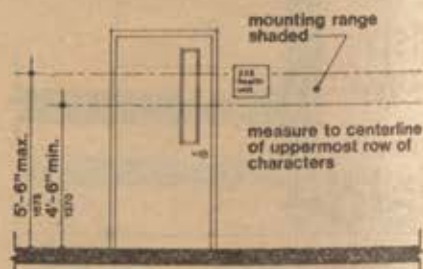
(3) Sans serif with sharply defined edges.

(4) If incised, provided with at least a $\frac{1}{4}$ inch (6 mm) stroke width.

(d) *Mounting location and height.*

Signage shall be placed in a standardized location throughout a building or facility as follows:

(1) Interior signage shall be located alongside of the door on the latch side and shall be mounted at between 4'6" and 5'6" (1,370 mm and 1,675 mm) above finish floor (fig. 20.1).



location & height

20.
1

(2) Exterior signage shall be installed at entrances and walks to direct individuals to accessible routes and entrances as required.

(e) *Symbol of accessibility.* Identification of accessible facilities as required by Subpart C—Scope shall be by means of the International Symbol of Accessibility. Display as shown in figures 20.2 and 20.3. Provide symbols of the following minimum dimensions:

Size	Location	Viewing distance
2 1/2 in. (65 mm)	Interior	Up to 30 ft. (9 m)
4 in. (100 mm)	Interior	Greater than 30 ft. (9 m)
4 in. (100 mm)	Exterior	Up to 60 ft. (18 m)
8 in. (200 mm)	Exterior	Greater than 60 ft. (18 m)



international symbol

20.
2



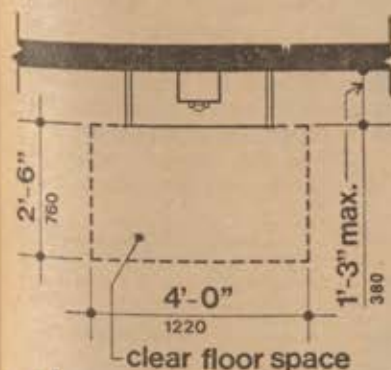
display conditions

20.
3

§ 1190.210 Telephones.

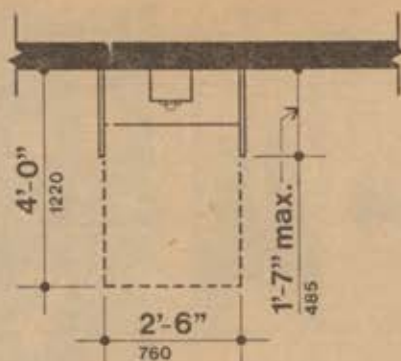
(a) *General.* Public telephones and related equipment required to be accessible by Subpart C—Scope shall comply with this section.

(b) *Clear floor or ground space.* Clear floor or ground spaces that comply with § 1190.40, Human data, shall be provided at each telephone (figs. 21.1, 21.2, and 21.3). These clear spaces shall not be restricted by installation of bases, fixed seats, or enclosures.



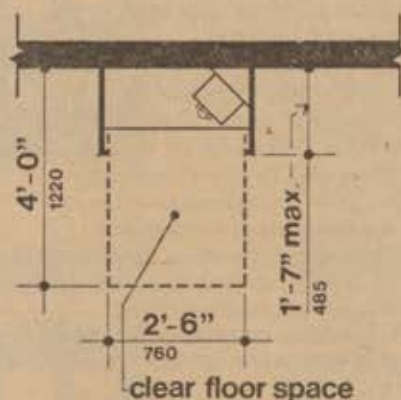
plan
telephone

21.
1



plan
telephone

21.
2



plan
telephone

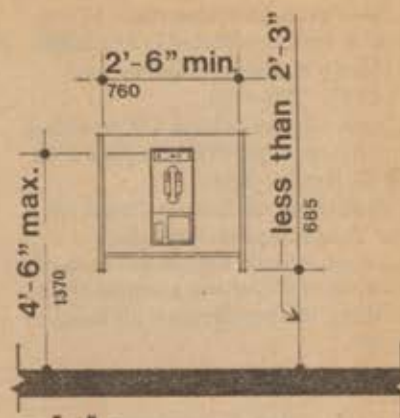
21.
3

(c) *Equipment characteristics.* Telephone equipment shall:

(1) Have the highest operable control, including but not limited to dial and coin slot, located at a maximum of 4'-6" (1,370 mm) above finish floor for side reach (fig. 21.4); and 4'-0" (1,220 mm) for forward and diagonal reach (figs. 21.5 and 21.6).

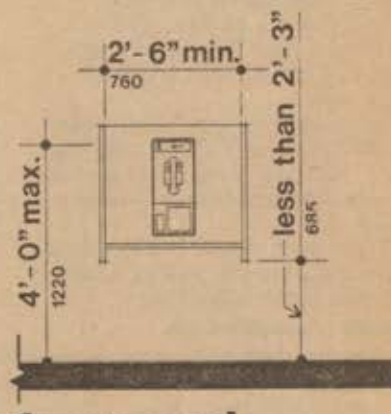
(i) *Exception.* If banks of telephones are provided, a minimum of one telephone per bank shall have the highest operable control at 4'-0" (1,220 mm).

(ii) [Reserved]



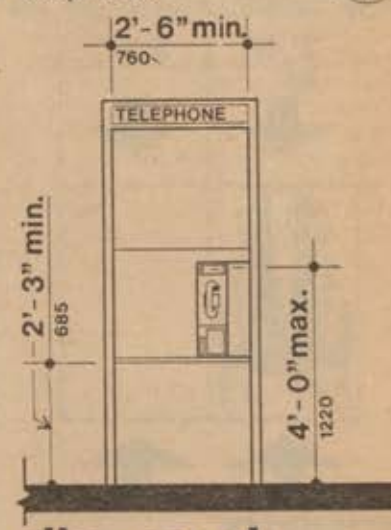
side
reach
telephone

21.
4



forward
reach
telephone

21.
5



diagonal
reach
telephone

21.
6

(2) Have push button controls where service by such equipment is available.

(3) Have a minimum handset cord length of 2'5" (735 mm).

(4) Have telephone books, if provided, located in a position that complies with § 1190.40, Human data.

(d) *Equipment for hearing impaired people.* Telephone receivers shall generate a magnetic field in the area of the receiver cap. Volume controls shall be provided in accordance with Subpart C—Scope.

§ 1190.220 Seating, tables, and work surfaces.

(a) *General.* Fixed seating spaces, tables, or work surfaces required to be accessible by Subpart C—Scope shall comply with this section.

(b) *Clearances.* Seating spaces for people in wheelchairs at tables, counters, or work surfaces shall:

(1) Have a clear floor or ground spaces that comply with § 1190.40, Human data.

(2) Have knee spaces that are least 2'3" (685 mm) high, 2'6" (760 mm) wide, and 1'7" (485 mm) deep. Clear access space and knee space may overlap 1'7" (fig. 15.15).

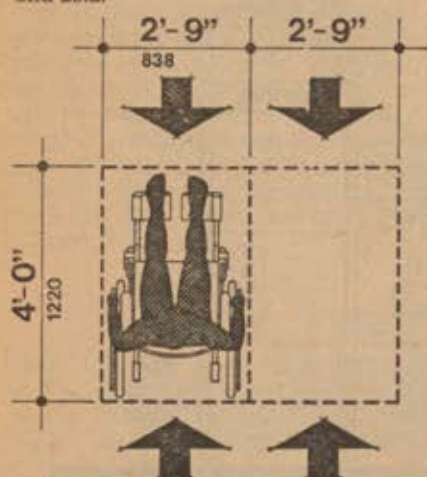
(3) Have table tops or work surfaces mounted between 2'4" to 2'10" (710 mm to 865 mm) above finish floor.

§ 1190.230 Assembly areas.

(a) *General.* Assembly areas required to be accessible by Subpart C—Scope shall comply with this section.

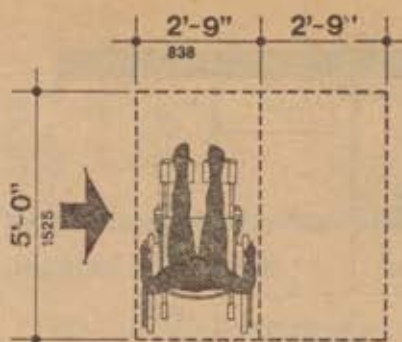
(b) *Size and location of viewing positions.* Accessible viewing positions shall:

(1) Provide minimum, level clear floor or ground areas as shown in figures 23.1 and 23.2.



viewing positions

23.
1



viewing positions

23.
2

(2) Accommodate one occupied wheelchair or one portable seat to accommodate persons with crutches or leg braces.

(3) Be in an adjoining configuration if only two positions are provided. Additional positions may be in single position configurations.

(4) Be an integral part of the seating plan and shall be dispersed throughout the assembly area providing sight lines comparable to those for all seating.

(i) *Exception.* In alteration work where it is structurally impossible to alter seating locations to disperse seating throughout, seating may be located in collected areas as structurally feasible. Seating must adjoin an accessible route that also serves as a means of emergency egress.

(ii) [Reserved]

(5) Adjoin an accessible route of emergency egress as required by paragraph 1190.50(h), Egress.

(6) Have surfaces that comply with § 1190.50(i), Ground and floor surfaces.

(c) *Performing areas.* Provide accessible routes that comply with § 1190.50, Walks, floors, and accessible routes, to performing areas, including but not limited to stages, arena floors, dressing rooms, locker rooms, and other rooms and spaces required for use of the assembly area.

(1) *Exception.* In alteration work where it is structurally impracticable to alter all performing areas to be on an accessible route, at least one of each type shall be made accessible.

(2) [Reserved]

(d) *Listening systems.* Provide assembly areas with a listening system to assist no fewer than two persons with severe hearing loss.

(1) If the listening system serves individual seats, locate such seats within 50 feet (15 m) of the stage or arena. Such locations shall provide a complete view of the stage or arena.

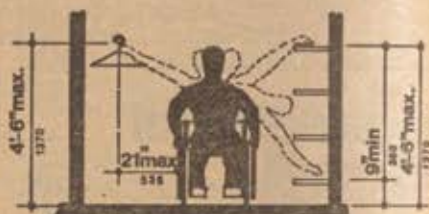
(2) Acceptable types of listening systems include, but are not limited to, audio loops and radio frequency systems.

§ 1190.240 Storage.

(a) *General.* Storage facilities required to be accessible by Subpart C—Scope shall comply with this section.

(1) Provide clear floor or ground spaces that comply with § 1190.40, Human data.

(2) Provide storage spaces and clothes rods that comply with paragraph 1190.40(d), Reach limitations (fig. 24.1).



storage

24.
1

(3) Provide accessible hardware that complies with § 1190.170, Controls and operating mechanisms.

(b) [Reserved]

Subpart E—Special Building or Facility Types or Elements. [Reserved]

[FR Doc. 81-1342 Filed 1-15-81; 8:45 am]
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Friday
January 16, 1981

Part VII

Department of Labor

Employment Standards Administration
Wage and Hour Division

**Procedures for Predetermination of Wage
Rates**

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 1

Procedures for Predetermination of Wage Rates

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The purpose of this document is to provide the final text of Regulations, 29 CFR Part 1, for predetermination of prevailing wage rates under the Davis-Bacon and Related Acts (minimum wages for Federal and federally assisted construction). Under the statute, the definition of wages includes the basic hourly rate of pay plus the rate for contributions or payments for bona fide fringe benefits. The definition of wages in the regulations has been revised to reflect the statutory definition. A new provision has also been added to the regulations to explain the method used to determine prevailing fringe benefits. In addition, there are clarifications regarding the application of wage determinations, modifications, and supersedeas wage determinations, and the necessary corrective action to be taken by contracting agencies when a wage determination which is either inapplicable or contains substantial errors is included in bidding documents and contracts or when a wage determination is omitted from a covered contract.

EFFECTIVE DATE: February 17, 1981.

FOR FURTHER INFORMATION CONTACT: Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Department of Labor, Room S3502, 200 Constitution Ave. NW., Washington, D.C. 20210. Phone: (202) 523-8333.

SUPPLEMENTARY INFORMATION: On December 28, 1979, a proposal was published in the Federal Register (44 FR 77026) to make certain revisions to 29 CFR Part 1. Procedures for Predetermination of Wage Rates under the Davis-Bacon and Related Acts. As stated in the proposal, its purpose was to reexamine and revise the procedures in Part 1 for predetermination of wage rates under the Davis-Bacon and Related Acts.

Interested persons were afforded the opportunity to submit comments to the Wage and Hour Division on or before March 17, 1981. Subsequently, on February 15 and April 1, 1980, notice was given in the Federal Register extending the dates for submission of

comments to March 27 and May 27, 1980, respectively. The extensions were granted to afford interested parties additional time to prepare their comments. Comments were received from approximately 128 interested parties, including contracting agencies, contractor associations, contractors, labor unions and organizations, State and local governmental bodies, business organizations, and others. Among those Federal agencies submitting comments were the Department of Defense, the General Services Administration, the Department of Energy, the National Aeronautics and Space Administration, the Logistics Service and the Office of Airport Planning and Programming of the Federal Aviation Administration, and the Department of Housing and Urban Development. Contractor associations and business organizations submitting comments included the Associated General Contractors of America, the Associated Builders and Contractors, Inc., the National Association of Home Builders, the Chamber of Commerce, the National Association of Manufacturers, and the Business Roundtable. Labor unions and organizations commenting on the proposal included the Building and Construction Trades Department of the American Federation of Labor-Congress of Industrial Organizations, whose submission was concurred in full by the center to Protect Workers' Rights and the Laborers International of North America, the International Brotherhood of Electrical Workers, Spokane District Council of Carpenters and the Northeastern Washington-Northern Idaho Building and Construction Trades Council.

While some requests for public hearings were made, it was decided, after careful consideration that, in view of the broad range of responses and issues addressed, such hearings would be redundant.

It has been determined that the amendments to these Regulations do not meet the criteria of Executive Order 12044 and the Department of Labor guidelines (44 FR 5570) for a regulatory analysis.

The following is an analysis of all the principal comments received and the concomitant changes made to the proposed rule. Each submission has been thoroughly reviewed, and each criticism and suggestion has been given careful consideration. For each section and, where appropriate, subsection of the final rule, the analysis contains a description of the major comments and recommendations, the Department's findings as to whether or not suggested

changes to the proposed rule would be in accordance with the statutory language and intent of the Davis-Bacon Act, and, the substantive changes herein adopted.

§ 1.2 Definitions.

Subsection 1.2(a)(1) generated a substantial number of comments concerning the Department's current practice of determining the prevailing wage rate on the basis of the wage that is found paid most frequently, provided that the wage must be paid to at least 30 percent of the workers in the classification. This principle has been applied to the determination of prevailing wages since 1935, when the Act was amended to require incorporation into contracts of wage determinations issued by the Secretary of Labor. Several commentators argued that the prevailing wage should be determined from the mathematical average only, while others expressed support for the existing procedure reflected in the proposal. It is our belief that the concept of a "prevailing wage" under the Davis-Bacon Act contemplates a rate actually being paid rather than a mathematically contrived figure that may not be paid to any one individual. Under this concept we believe that a rate of central tendency can be acceptably measured by the arithmetic mode or the value in the data set that occurs most frequently, with a proviso to preclude adoption of a wage rate paid to relatively few people.

Some commentators objected to incorporating fringe benefits in the prevailing wage rate on the basis that "open-shop" or "merit pay" contractors in a given area provide disparate fringe benefit packages while contractors signatory to negotiated agreements provide the same fringe package. Thus, they contend that under the proposed regulations, the fringe benefit packages of organized contractors are more likely to be recognized as prevailing. More frequent comments were directed at the procedure to be adopted for computing fringe benefits rather than with the concept that fringe benefits should be recognized as part of the prevailing wage. These commentators expressed concern primarily with 1) whether the prevailing basic hourly wage rate and prevailing fringe benefits should be separately determined or determined as a package, and 2) the manner of treatment of individuals receiving no fringe benefits.

We believe that the method proposed, in which a prevailing package is determined in the first instance, is in accordance with the terms of the Davis-Bacon Act, which defines "prevailing

wages" as including the basic hourly rate of pay and the rate of contributions or costs of fringe benefits. A separate determination is required as a practical matter if the averaging method is used, because of the necessity of separating the fringe benefits from the basic hourly rate in paying overtime premiums; where the plurality package rate is utilized, separation into the wage rate and fringe benefits should be easily accomplished.

Treatment of laborers and mechanics receiving no fringe benefits is implicitly set forth in the proposed regulation. If any single package of wages and fringe benefits is paid with respect to a plurality of the workers constituting at least 30 percent of the classification, that package prevails; thus a prevailing package would include the situation where a plurality of the workers receive the same rate and no fringe benefits. Similarly, if there is no plurality wage and fringe benefit package paid with respect to at least 30 percent of the workers, the fringe benefit rate is the average fringe benefit rate weighted by all laborers and mechanics in the classification—including those receiving no fringe benefits; thus the "zeros" are averaged together with the workers who receive fringe benefits. It should be noted that in our experience that fringe benefits of some kind are currently provided by most contractors. We will be meeting with industry groups and conducting pilot studies, as appropriate, to ensure that full, accurate fringe benefit data are collected.

No changes are made in § 1.2(a)(1). Numerous adverse comments were received on the second sentence of proposed § 1.2(a)(2) concerning differences in wage rates due solely to the point in time at which the wages are paid. These commentators principally contended that the language was unclear, it incorporated a statistically invalid concept, and it unfairly discriminated in favor of collectively bargained wage rates. A few commentators supported the subsection as proposed. On final consideration, we believe that the update of data may more acceptably be accomplished by means such as expedited surveys, truncating the data submission period, modifying the use of peak week data and other methods. We agree that, as proposed, the second sentence of this subsection does not yield totally dependable statistical data. Therefore, the second sentence of this proposed section is deleted and the first sentence, standing alone, is adopted.

Since no comments were received on § 1.2(c), this subsection is adopted as proposed.

One commentator suggested that § 1.2(d) be changed to reflect that the various Federal-Aid Highway Acts have been revised, codified, and re-enacted as Title 23, United States Code. We agree that it is appropriate to adopt the uniform citation suggested by this commentator. The appropriate deletion and substitution has been made in the final text. This commentator also suggested substituting "state highway agency" for "state highway department" in the text. While this has merit, the language of 23 U.S.C. 113 refers to "highway department of the State"; therefore we do not believe that it is appropriate to adopt the suggested change. Another commentator recommended a greatly expanded definition of "agency". We find no basis in existing law to support such a wide-ranging definition of "agency" and have retained the text with the exception of the changes made in reference to 23 U.S.C. 113.

§ 1.3 Obtaining and compiling wage information.

Several commentators objected to the use of wage rate data obtained from Federally financed or locally financed projects subject to coverage by the Davis-Bacon and Related Acts or State prevailing wage laws. The Act contains no such distinction. Federally and locally financed construction must be included to provide realistic data upon which to base determinations for such construction as highways, sewers, bridges, dams and other public works structures that are rarely, if ever, constructed with private funds.

It was suggested that the Department accept data only from contractors so as to eliminate the possibility of duplication. The evidence collection forms used require the listing of sufficient pertinent project information to enable quick and adequate identification of duplicate data. In keeping with the principles of open government, it is the Department's long standing policy, as codified by the current regulations, to encourage and to offer the opportunity to all interested parties to voluntarily submit wage data, thereby expanding the survey's universe and increasing the validity of the survey.

The concern expressed by some public agencies relating to their expanded role in the collection of data is unfounded. The changes in this section are merely editorial and do not mandate an expansion of their role.

By virtue of Pub. L. 90-495 (1968), Davis-Bacon prevailing wage requirements extend to all Federal-Aid highway systems pursuant to 23 U.S.C. 113. Proposed § 1.3(b)(4), which erred in

limiting consultation with State Highway departments to Interstate System projects, has been corrected accordingly.

§ 1.4 Outline of agency construction programs.

Several commentators questioned whether the information required by this section would be actually used by the Department, suggesting the requirement was burdensome.

As is implied by the phrase "to the extent practicable", at the beginning of this section, it is recognized that some agencies by virtue of their contracting practices may not be able to submit a complete listing of proposed construction programs. Thus, the section contemplates the submission only of information already in hand or readily obtainable. Accordingly, the reporting requirement, which is also codified in the current regulations, is not considered to be excessively burdensome to Federal contracting agencies and State highway departments. The data submitted is of considerable value to the Department in scheduling wage surveys and to the various contracting agencies in helping to insure a planned approach to wage surveys which will provide wage determinations on an as-needed basis by the procurement community.

§ 1.5 Procedure for requesting wage determinations.

One commentator suggested that this Department should include 18 basic classifications in all wage determinations due to unfamiliarity with proper classifications by the contracting agencies.

This recommendation cannot be feasibly adopted. Wage data for every classification is not always readily available; thus the proposed change would place an excessive administrative burden on the Department. In addition, this recommendation fails to consider variations in the classifications needed, arising from differences in area practices. Experience has shown that while agency officials requesting rates do not always request the proper classifications, follow-up actions by this Department's personnel and the routine issuance of wage determinations containing classifications not specifically requested have in the vast majority of cases essentially obviated the problem suggested by this commentator.

§ 1.6 Application of wage determinations.

§ 1.6(a)(1). Several commentators have suggested the extension of project

wage determinations from the current 120 days to 180 days. This would allow the routine use of wage determinations that are already almost 6 months old when incorporated in the contract. It is believed that this policy would be contrary to Congressional intent that the wage determination reflect the current prevailing wage in the area, to the extent practicable.

Conversely, we cannot adopt the suggestion of another commentator to summarily reject any request for an extension to an expiring project wage determination where an applicable modification has already been made. The criteria for granting extensions which are set forth in both the current and proposed Regulations (i.e., that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of government business) are deemed to be reasonable and should be maintained. The commentator's suggestions for clarifying language of the criteria for requesting extensions and/or new wage determinations have been carefully reviewed and appropriate changes in this paragraph have been made.

§ 1.6(b) and Appendix C. Several commentators objected to the codification of All Agency Memorandum Nos. 130 and 131, concerning classification of projects. The principal objections concerned the apparent establishment of nationwide standards without regard to local area practices. The memoranda were intended to be guidelines which would not be applicable where the category of a project in a construction sense is not clear and where a different category is established by area practice. Appendix C has therefore been revised to emphasize the significance of area practice where a legitimate dispute exists concerning the character of a project, and to make it clear that such questions are to be referred to the Wage and Hour Division for a ruling.

One commentator suggested that questions should not be referred to the Wage and Hour Division except at the contracting agency's discretion. Because of the Department's statutory responsibilities regarding wage determinations, and because of our experience with misapplication of wage determinations by agencies as a result of their lack of expertise or otherwise, referral of all disputes to the Department has been found to be necessary. The validity of the Department's current regulation (29 CFR 5.12) requiring such referral has been upheld by the Court of Appeals for the Fifth Circuit in *North*

Georgia Building and Construction Trades Council v. Goldschmidt, 621 F. 2d 697 (1980).

Several specific comments were received concerning the circumstances in which more than one wage determination is issued for a project. In this connection, these comments requested clarification of the terms "project" and "substantial". These sections of the memoranda have been modified as a result of these comments in an attempt to make clear standards for application of multiple schedules—where the work constitutes 20 percent or more of the total project cost, or where the work at issue is estimated to cost at least \$250,000. The dual test of amount of construction and functional relationship between the parts of the project in determining what is "incidental", is apparently confusing and unnecessary, and therefore has been eliminated. Additional illustrative examples have been added to clarify the term "project".

A few commentators were of the incorrect view that by publishing the memoranda as an appendix, they were not open to comment. To the contrary, this was not the Department's intention, as indicated by the fact that they were published as a part of the document on which comments were invited. They were published as an appendix only because they were not in traditional regulation form. Similarly, one commentator suggested that the agreement of unions and contractors should be obtained. However, the views of these groups were obtained in the rulemaking process.

Appendix C has been amended in accordance with the discussion above. In addition, changes were made to clarify the memoranda, and to combine them into one coherent inclusive document.

§ 1.6(c). Numerous commentators objected to the proposed revision of the "10 day" rule which would require contracting agencies to accept modifications to wage determinations received less than 10 days before the opening of bids unless the agency finds there is not sufficient time to notify bidders of the modification and to send a report of its findings to the Administrator.

It has been the consistent policy of the Department of Labor that bid solicitations should contain the most recently issued determination of current prevailing wages which can be included, without causing undue disruption of the procurement process. However, experience has shown that in many cases contracting agencies have declined to use wage modifications

received less than 10 days before bid opening, even though it may have been possible to notify bidders of the modification prior to bid opening.

In this regard, the courts have held that the current 10-day rule imposes an affirmative obligation on the contracting agencies to make a substantive determination as to whether there is sufficient time to notify bidders of modifications received less than 10 days before bid opening. (*Operating Engineers, Local 627 v. Arthurs*, 355 Supp. 7 (W.D. Okla.), *aff'd*, 480 F. 2d 603 (10th Cir. 1973).) In view of the agencies' present obligation to make a determination as to sufficient time and the Department's considered opinion that the agencies frequently fail to do so it was decided that the Act could be better implemented by adopting the proposed revision to place greater emphasis on the agencies' obligation in this area. Accordingly, the proposed revision of the 10 day rule is not considered a significant change in these obligations. We are also of the opinion that the notification process can be completed in accordance with the 10-day rule in most cases without undue disruption of the procurement process or inflation of bid prices. Of course, it is recognized that there may be cases where an agency will find that it is not feasible to adopt modifications less than 10 days before bid opening. In such cases, the agency would, prior to bid opening, document its finding of insufficient time and incorporate this finding in the contract file or docket.

Accordingly, while we have considered the objections of some commentators to this reporting requirement, we find that written documentation of the agency's finding of insufficient time is in keeping with sound administrative practices and does not impose an undue paperwork burden upon the agency. The Department has determined that it is appropriate to eliminate the requirement that the report be submitted to the Department, and to adopt one commentators recommendation that the report be in the form of a memo to the contract file and made available to the Administrator upon request. With respect to one commentator's view that the reporting requirement will encourage agencies to adopt modifications rather than make a documented finding of insufficient time, we note that the primary purpose of the reporting requirement is to ensure the utilization of modifications where feasible.

Numerous commentators also opposed the proposed "60 day rule". Under this proposed rule, if a contract

(to which a general wage determination has been applied) has not been awarded within 60 days after bid opening, any modification published prior to bid opening would be effective unless the agency has obtained an extension of the 60 day period from the Administrator.

The Department's obligation to insure that the most current determination of prevailing wages is included in contracts subject to the Davis-Bacon Act is also frustrated by delays which occur in awarding a contract after bid opening. However, it was deemed necessary to adopt a 90 day rather than the proposed 60 day rule to be consonant with the expiration date currently placed on project determinations.

In view of the objections to oral notification of a modification to a wage determination, we have studied the issue further and in consideration of the problems which may arise as a result of misinterpretation of an oral modification notice, we deem it appropriate to provide that written notification of a modification constitutes receipt.

It appears from apparent misinterpretations expressed by several commentators that clarification of § 1.6 with respect to projects financed under the National Housing Act and section 8 of the U.S. Housing Act of 1937 would be appropriate. (The somewhat different application of the rules to such projects is mandated by the statutory schemes of those two acts.) However we believe that the present format of the proposed regulations makes it clear that the 10 day rule applies to competitive procurements under these two acts, and therefore we have made no change in that provision.

With respect to the recommendation of one commentator that the proposed regulations be amended to specify that project and general wage determinations should be modified not less often than every 6 months, it is the Department's considered opinion that due to resource limitations and the lack of sufficient wage data in all cases, this recommendation would not be administratively feasible.

Accordingly, § 1.6(b) as amended is adopted.

§ 1.6(e). Several commentators objected to § 1.6(e), stating that it improperly gives the Administrator discretionary authority to determine what is a wrong or erroneous wage determination. They argued that this is an impractical, destabilizing concept, disruptive to the procurement process. They expressed concern that contractors would be penalized for errors which are not their fault. Three of these commentators also stated that the difference between wrong and

erroneous wage determinations needed to be clarified. One commentator stated this subsection would allow this Department unlimited flexibility to circumvent other sections of these regulations. One commentator opposed oral notification, recommending adoption of only written notification.

It is not the Department's intention that a contractor would be penalized by the correction of a wage determination prior to contract award. Rather, it is envisioned that in a competitive procurement, the agency would resolicit the contract with the correct wage determination or permit the contractor to withdraw his bid. In other procurements, the contract price (or amount of Federal assistance) presumably would be adjusted accordingly.

It is clear that the word "wrong" as used in this subsection is used in the sense that the wage determination in the contract is not the wage determination applicable to the contract, such as a highway wage determination being used on a residential project. In contrast, an erroneous wage determination contains errors within the wage determination, such as incorrect wage rates. However, in view of obvious confusion expressed over the distinction between "wrong" and "erroneous", the word "erroneous" has been replaced by "contains substantial errors", thereby also limiting the Department's discretion to withdraw a wage determination. Further, we agree that it is appropriate to withdraw the oral notification provision of this section and to only retain the provision for written notification.

§ 1.6(f). Numerous commentators objected to this subsection, which mandates insertion of a wage determination after contract award where no wage determination has been put in the contract or where the Department of Labor issued an inapplicable wage determination because it was misadvised as to the nature of the project or its location. They argue that the contract awarded would not be the same as the contract for which bids were solicited and it would increase costs and contractor risks. They also stated it places an undue hardship on contractors and contracting agencies by requiring them to correct errors which may have been caused by the Department of Labor. Several commentators stated that it gives the Department of Labor powers beyond those expressed in Reorganization Plan 14 of 1950. Several commentators also noted the inherent difficulties in amending or terminating and resoliciting a contract. Three

commentators suggested that, if adopted, this section should clearly provide for the right to appeal any decision by the Administrator ordering the incorporation of a wage decision after contract award to the Comptroller General or the Wage Appeals Board.

Subsection 1.6(f) is necessary to make clear the contracting agency's obligation to correct those situations where it has failed to include any wage determination in a covered contract, or has included an inapplicable wage determination. It is incumbent on this Department to insure that the statutory requirement of the Davis-Bacon Act to include proper wage determination in all covered contracts is met. Contrary to the views of some commentators, the authority for this subsection is derived directly from the statutory language as well as Reorganization Plan 14 of 1950.

We are cognizant of the stated additional cost and risk factors and do not intend that this subsection be a disruptive influence. We have provided that appropriate changes can be accomplished by the contracting agency by whatever means it deems appropriate, which should minimize any disruption to the procurement process, or inequitable cost increases or other problems faced by bidders and contractors. Therefore, subsection 1.6(f) has been adopted with minor word change.

No further amendment of this subsection is warranted with respect to the issue of the right to appeal to the Wage Appeals Board, since such a right already exists.

§ 1.6(g). Some commentators objected to proposed § 1.6(g), because its application may result in increased costs to contractors without providing for reimbursement for these extra costs. We recognize back wage payments may be necessary and we contemplate that contractors would take these into account in requesting funding from the contracting agency.

One commentator suggested that it be mandatory that the wage determination current at the time funding is approved by the agency be applied to the contract as of the funding approval date. This commentator also questioned the legality of the Department's authority to require any retroactive payment of Davis-Bacon wage rates. However, retroactive payment is implicit in the various statutory provisions. The Department's position in this regard is consistent with the recent decision in *North Georgia Building and Construction Trades Council v. Goldschmidt*, 621 F.2d 697 (5th Cir. 1980). Assuming this subsection would be finalized, this commentator requested

clarification of what wage determination would be applicable—the one current at the time of contract award or start of construction, at the time of funding approval, or at some point in between. It has been determined that the wage determination in effect at the time of contract award (or at the start of construction where applicable) is appropriate. Thus, when a wage determination is made effective retroactively to the contract award date or start of construction, the rates contained therein will be those prevailing at that earlier time.

§ 1.7 Scope of consideration.

Several commentators stated that the definition of area in § 1.2(b) of this part includes political subdivisions smaller than the county, and our reliance in § 1.7(a) on the county as the normal survey area is not consistent with the intent of the Davis-Bacon Act. They suggest we consider smaller local civil subdivisions within the county as the only basis for making wage determinations. Other commentators suggested we expand the area of consideration to the Standard Metropolitan Statistical Area. Subsection 1.7(a) expresses the actual practice that has been used by this Department in making wage determinations. Experience has demonstrated that the standard, but not inflexible, practice of using the county as the area of consideration is the administratively feasible approach in order to collect meaningful data. In our view, this practice is in accord with the Act. However, smaller civil subdivisions are occasionally used where it is warranted under special circumstances. Similarly, when there is not sufficient data available in individual counties to make an accurate wage determination, we have no choice but to survey surrounding counties.

One commentator requested that the distinction between a "metropolitan county" and a "rural county" be clarified in § 1.7(b). The terms "metropolitan county" and "rural county", as used in subsection 1.7(b), generally coincide with the inclusion or exclusion of a county from a Standard Metropolitan Statistical Area, although other criteria may be considered in a particular case if warranted under the circumstances. We believe that this subsection clearly restricts the conditions under which the Department can use data from such dissimilar counties to make a wage determination. However, we believe that it is also necessary to recognize that in extraordinary circumstances, such as when a specialized project is proposed

in a rural county where there has been no similar type construction in the county or in surrounding counties, it may be necessary to obtain wage rate data from metropolitan counties where there have been such projects.

A few commentators objected to the term "in the State" as used in § 1.7(c) on the basis that the Davis-Bacon Act speaks of civil subdivisions of the states as being the appropriate area of consideration in making wage determinations. One other commentator suggested that this same term was too restrictive and we should be able to consider wage rate data from adjoining states. It has been our policy that in the unusual case where there is not sufficient current wage rate data available in a county or surrounding counties, we expand the area of consideration. We believe that the use of "in the State" is consistent with our policy, but we do not envision except in the most extraordinary circumstances that data from an entire State would be needed to make a wage determination. In view of the comments, we have added "in surrounding counties" immediately before "in the State" in the text to clarify that when such circumstances arise, the first consideration outside the county will be the surrounding counties.

While some commentators objected to work performed as the criterion for making distinctions between classifications of laborers and mechanics, we regard the statute as requiring that distinctions be based on the classification of work performed rather than on the level of skill. In any given classification individual skill levels will vary from employee to employee and any attempt to measure and issue rates on that basis is administratively impossible and could throw the procurement into complete confusion. Subsection 1.7(d) is adopted with a minor language insert clarifying that the classifications will be issued on wage determinations only where the classification prevails in the area.

§ 1.8 Reconsideration by the Administrator.

All comments received were directed at the amount of time and expense in the form of delays to the start of construction involved in seeking reconsideration of wage determinations.

After due consideration the proposed regulation has been changed to reflect the concerns of the commentators and we have made the Administrator responsible for responding substantively to the reconsideration request within a 30 day period or to

notify the requestor that additional time is necessary.

Appropriate changes to reflect this policy have been made in the regulations.

§ 1.9 Review by the Wage Appeals Board.

Two commentators objected to the elimination of administrative hearings, citing the loss of due process and accountability on the part of Wage and Hour officials. This provision was eliminated because of the lengthy delays incurred by formal administrative hearings, the infrequency of their occurrence, the lack of expertise of administrative law judges, and in the interest of minimizing disruptions to the procurement process.

It is the opinion of the Department that in view of the expertise developed by the Wage Appeals Board through its existing responsibilities under section 1.16 of the current regulations, it is appropriate to eliminate the provision for formal administrative hearings. Because of the provision for appeal to the Board, this can be done without depriving interested parties of their right to due process.

One commentator was of the incorrect view that the proposed regulations limit the authority of the Board to hear an appeal on a portion of a wage determination. The Board has this authority. Additionally, pursuant to 29 CFR Part 7, the Board has the discretion to hear an appeal on all or part of any determination.

One commentator also misinterpreted the proposed regulations to indicate that field surveys would no longer be conducted. However, § 1.3(c) of the proposed regulations states that field surveys may be conducted as necessary to obtain sufficient data upon which to base wage determinations.

Accordingly, the proposed regulation will be adopted.

In addition to the above, there were other comments recommending minor editorial and language changes which we deemed valid, and we have amended the affected sections.

This rule was drafted under the supervision and direction of Donald Elisburg, Assistant Secretary of Labor, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210 (202-523-6191).

Accordingly, 29 CFR Part 1 is revised as set forth below.

Signed at Washington, D.C. this 12th day of January, 1981.

Donald Elisburg,

Assistant Secretary of Labor, Employment Standards Administration.

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

Sec.

- 1.1 Purpose and scope.
- 1.2 Definitions.
- 1.3 Obtaining and compiling wage rate information.
- 1.4 Outline of agency construction programs.
- 1.5 Procedure for requesting wage determinations.
- 1.6 Use and effectiveness of wage determinations.
- 1.7 Scope of consideration.
- 1.8 Reconsideration by the Administrator.
- 1.9 Review by Wage Appeals Board.
- Appendix A.
- Appendix B.
- Appendix C.

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; and the laws listed in Appendix A of this Part.

§ 1.1 Purpose and scope.

(a) The procedural rules in this part apply under the Davis-Bacon Act (46 Stat. 1494, as amended; 40 U.S.C. 276a-276a-7) and other statutes listed in Appendix A to this part which provide for the payment of minimum wages, including fringe benefits to laborers and mechanics engaged in construction activity under contracts entered into or financed by or with the assistance of agencies of the United States or the District of Columbia, based on determinations by the Secretary of Labor of the wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where such work is to be performed. Functions of the Secretary of Labor under these statutes and under Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. Appendix), except those assigned to the Wage Appeals Board (see 29 CFR Part 7), have been delegated to the Assistant Secretary of Labor for Employment Standards who in turn has delegated the functions to the Administrator of the Wage and Hour Division, and authorized representatives.

(b) The regulations in this part set forth the procedures for making and applying such determinations of prevailing wage rates and fringe benefits pursuant to the Davis-Bacon Act, each of the other statutes listed in Appendix A, any other Federal statute providing

for determinations of such wages by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act.

(c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determinations published in the Federal Register for contracts in specified localities, and to project wage determinations for use on contract work to be performed on a specific project.

§ 1.2 Definitions.¹

(a) The term "wages" (and its singular form) has the meaning prescribed in section 1(b) of the Davis-Bacon Act (40 U.S.C. 276a(b)). It includes the basic hourly rate of pay and the rate of contributions or payments made on behalf of the laborers and mechanics for bona fide fringe benefits.

(1) A "wage" shall be deemed to be the "prevailing wage" if it is the wage (hourly rate of pay and fringe benefits) paid to the greatest number of laborers or mechanics in the classification on similar projects in the area during the period in question, provided that the wage is paid to at least 30% of those employed in the classification. If the same wage (hourly rate of pay and fringe benefits) is not paid to at least 30% of those employed in the classification during the period in question, the "prevailing wage" shall be deemed to be the average of the basic hourly rates of pay plus the average of the rates of contributions or payments for bona fide fringe benefits, weighted by the total employed in the classification.

(2) In determining the "prevailing wages" at the time of issuance of a wage determination, the Administrator will be guided by paragraph (a)(1) of this section and will consider the types of information listed in § 1.3(b) of this part.

(b) The term "area" in determining wage rates under the Davis-Bacon Act and the prevailing wage provisions of the other statutes listed in Appendix A shall mean the city, town, village, county or other civil subdivision of the State in which the work is to be performed.

(c) The term "Administrator" shall mean the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division is designated to act for the Administrator under this part. Except as

¹ These definitions are not intended to restrict the meaning of the terms as used in the applicable statutes.

otherwise provided in this part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator for the performance of functions relating to the making of wage determinations.

(d) The term "agency" shall mean the Federal agency, State highway department under 23 U.S.C. 113, or recipient State or local government under Title 1 of the State and Local Fiscal Assistance Act of 1972.

§ 1.3 Obtaining and compiling wage rate information.

For the purpose of making wage rate determinations, the Administrator will conduct a continuing program for the obtaining and compiling of wage rate information.

(a) The Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. The Administrator will also obtain data from agencies on wage rates paid on construction projects under their jurisdiction. The information submitted should reflect not only the wage rates paid a particular classification in an area, but also the type or types of construction on which such rate or rates are paid.

(b) The following types of information will be considered in making wage rate determinations:

(1) Statements showing wage rates paid on projects. Such statements should indicate the names and addresses of contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, the number of workers employed in each classification on each project, and the respective wage rates paid such workers.

(2) Signed collective bargaining agreements. The Administrator may request the parties to an agreement to submit statements certifying to its scope and application.

(3) Wage rates determined for public construction by State and local officials pursuant to prevailing wage legislation.

(4) Information furnished by Federal and State agencies. See § 1.5. In making wage rate determinations pursuant to 23 U.S.C. 113, the highway department of the State in which a project in the Federal-Aid highway system is to be performed shall be consulted. Before making a determination of wage rates for such a project the Administrator

shall give due regard to the information thus obtained.

(5) Wage rate data submitted to the Department of Labor by contracting agencies pursuant to 29 CFR 5.5(a)(1)(ii).

(6) Any other information pertinent to the determination of prevailing wage rates.

(c) The Administrator may initially obtain or supplement such information obtained on a voluntary basis by such means, including the holding of hearings, and from any sources determined to be necessary. All information of the types described in § 1.3(b) of this Part, pertinent to the determination of the wages prevailing at the time of issuance of the wage determination, will be evaluated in the light of § 1.2(a) of this Part.

§ 1.4 Outline of agency construction programs.

To the extent practicable, at the beginning of each fiscal year each agency using wage determinations under any of the various statutes listed in Appendix A will furnish the Administrator with a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction. During the fiscal year, each agency will notify the Administrator of any significant changes in its proposed construction programs, as outlined at the beginning of the fiscal year.

§ 1.5 Procedure for requesting wage determinations.

(a)(1) Except as provided in paragraph (b) of this section, the Federal agency shall initially request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Standard Form 308 to the Department of Labor at this address:

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, D.C. 20210.

The agency shall check only those classifications on the applicable form which will be needed in the performance of the work. Inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient. Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form. The agency shall not list classifications which can be fitted into classifications on the form, or classifications which are

not generally recognized in the area or in the construction industry.

(2) In completing SF-308, the agency shall furnish:

(i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

(ii) The county (or other civil subdivision) and State in which the proposed project is located.

(3) Such request for a wage determination shall be accompanied by any pertinent wage payment information which may be available. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the area.

(b) Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Administrator, upon the request of a Federal agency or in his discretion, may publish a general wage determination in the Federal Register when, after consideration of the facts and circumstances involved, the Administrator finds that the applicable statutory standards and those of this part will be met. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor, provided, that questions concerning its use are referred to the Department of Labor in accordance with § 1.6(b).

(c) The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing in the Department of Labor will take at least 30 days.

§ 1.6 Use and effectiveness of wage determinations.

(a)(1) Project wage determinations initially issued shall be effective for 120 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness it is void. Accordingly, if it appears that a wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an agreement to enter into a housing

assistance payments contract under section 8 of the U.S. Housing Act of 1937, and the start of construction) the agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award but after bid opening (or before the start of construction, but after initial endorsement under the National Housing Act, or before the start of construction but after the execution of an agreement to enter into a housing assistance payments contract under Section 8 of the U.S. Housing Act of 1937), the head of the agency or his or her designee may request the Administrator to extend the expiration date of the wage determination in the bid specifications instead of issuing a new wage determination. Such request shall be supported by a written finding which shall include a brief statement of the factual support, that the extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all of the circumstances, including an examination to determine if the previously issued rates remain prevailing. If the request for extension is denied, the Administrator will proceed to issue a new wage determination for the project.

(2) General wage determinations issued pursuant to § 1.5(b) and which are published in the Federal Register, shall contain no expiration date.

(b) Application of general wage determinations to projects and application of project wage determinations with more than one wage rate schedule shall be in accordance with Appendix C of this part. Any question regarding application of wage rate schedules or the guidelines contained in Appendix C shall be referred to the Administrator for resolution.

(c)(1) Project and general wage determinations may be modified from time to time to keep them current. A modification may specify only the items being changed, or may be in the form of a supersedeas wage determination, which replaces the entire wage determination. Such actions are distinguished from a determination by the Administrator under paragraphs (d), (e) and (f) of this section that an erroneous wage determination has been

issued or that the wrong wage determination or wage rate schedule has been utilized by the agency.

(2)(i) All actions modifying a project wage determination received by the agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:

(A) In the case of contracts entered into pursuant to competitive bidding procedures, modifications received by the agency less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening, to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is received after bid opening.

(B) In the case of those contracts entered into under the National Housing Act which are not awarded pursuant to competitive bidding procedures, modifications shall be effective if received prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(C) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, if there is no contract for the project awarded pursuant to competitive bidding procedures, modifications shall be effective if received prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is executed, whichever occurs first.

(ii) Modifications to project wage determinations and supersedeas wage determinations shall not be effective after contract award, or after the beginning of construction, as appropriate.

(iii) Actual written notice of a modification shall constitute receipt.

(3) All actions modifying a general wage determination shall be effective with respect to any project to which the determination applies, if published before contract award (or the start of construction where there is no contract award), except as follows:

(i) In the case of contracts entered into pursuant to competitive bidding procedures, modifications published less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall

be made available to the Administrator upon request. No such report shall be required if the modification is published after bid opening.

(ii) In the case of those contracts entered into under the National Housing Act which are not awarded pursuant to competitive bidding procedures, modifications shall be effective if published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(iii) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, if there is no contract for the project awarded pursuant to competitive bidding procedures, modifications shall be effective if published prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.

(iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (c)(3)(ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modifications published in the Federal Register prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

(v) A modification to a general wage determination is "published" within the meaning of this section on the date of publication in the Federal Register, or on the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first.

(vi) Modifications or supersedeas wage determinations to an applicable general wage determination published after contract award or after the beginning of construction, as appropriate, shall not be effective.

(d) Upon his/her own initiative or at the request of an agency, the Administrator may correct any wage

determination, without regard to paragraph (c) of this section, whenever the Administrator finds such a wage determination contains clerical errors. Such corrections shall be included in any bid specifications containing the wage determination, or in any on-going contract containing the wage determination in question, retroactively to the start of construction.

(e) Written notification by the Department of Labor prior to the award of a contract (or the start of construction under the National Housing Act, under Section 8 of the U.S. Housing Act of 1937, or where there is no contract award) that (1) there is included in the bidding documents or solicitation the wrong wage determination or the wrong schedule or that (2) a wage determination is withdrawn because the Department of Labor has determined that it contains substantial errors (as distinguished from rates which are no longer current), shall be effective immediately without regard to paragraph (c) of this section.

(f) The Administrator may issue a wage determination after contract award or after the beginning of construction if the agency has failed to incorporate a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act, or has used a wage determination which by its terms or the provisions of this part does not apply to the contract. Further, the Administrator may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction when it is found that the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the agency's request for the wage determination. Under any of the above circumstances, the agency shall incorporate the valid wage determination in the contract specifications retroactively to the date of award, or the beginning of construction, as appropriate. This should be done by whatever means the agency deems appropriate, including, for example, terminating and resoliciting the contract, or amending the contract through supplemental agreement or through change order. Such an amendment or change order may include price adjustments where the agency finds it to be appropriate under its regulations.

(g) If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is not approved

prior to contract award or the beginning of construction, as appropriate, the agency shall request a wage determination prior to approval of such funds. Such a wage determination shall be issued based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under Section 8 of the U.S. Housing Act of 1937 or where there is no contract award), as appropriate, and shall be incorporated in the contract specifications retroactively to that date, provided, that upon the request of the head of the agency in individual cases the Administrator may issue such a wage determination to be effective on the date of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship, provided further that the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or the start of construction, as appropriate.

§ 1.7 Scope of consideration.

(a) In making a wage determination, the "area" will normally be the county unless sufficient current wage data (data on wages paid no more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate) is unavailable to make a wage determination.

(b) If there has not been sufficient similar construction within the area in the past year to make a wage determination wages paid on similar construction in surrounding counties may be considered, provided that projects in metropolitan counties may not be used as a source of data for a wage determination in a rural county, and projects in rural counties may not be used as a source of data for a wage determination for a metropolitan county, except under extraordinary circumstances where there is not sufficient data available on projects in other rural or metropolitan counties.

(c) If there has not been sufficient similar construction in surrounding counties or in the State in the past year, wages paid on projects completed more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered.

(d) Classifications and wage and fringe benefit rates will be issued only for identifiable "classes of laborers and mechanics." Distinctions between classifications are based upon differences in the work performed, not upon skill and supervisory functions. A semi-skilled classification of laborers or

helpers, for example, is issued when the classification prevails in the area, provided that the classification as utilized in the area performs a scope of duties which distinguishes it from other classifications in the area. Prevailing wages for apprentices and trainees are not issued on wage determinations, but their use is permitted in accordance with § 5.5(a)(4) of part 5.

§ 1.8 Reconsideration by the Administrator.

Any interested person may seek reconsideration of a wage determination issued under this part or of a decision of the Administrator regarding application of a wage determination. Such a request for reconsideration shall be in writing accompanied by a full statement of the interested person's views and any supporting wage data or other pertinent information. The Administrator will respond within 30 days of receipt thereof, or will notify the requestor within the 30 day period that additional time is necessary.

§ 1.9 Review by Wage Appeals Board.

Any interested person may appeal to the Wage Appeals Board for a review of a wage determination or its application made under this part, after reconsideration by the Administrator has been sought pursuant to § 1.8 and denied. Any such appeal may, in the discretion of the Wage Appeals Board, be received, accepted, and decided in accordance with the provisions of 29 CFR Part 7 and such other procedures as the Board may establish.

Appendix A

Statutes Related to the Davis-Bacon Act Requiring Payment of Wages at Rates Predetermined by the Secretary of Labor

1. The Davis-Bacon Act (secs. 1-7, 46 Stat. 1494, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).
2. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
3. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).
4. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).
5. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).
6. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
7. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).
8. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

9. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

10. The Federal-Aid Highway Act of 1956 (sec. 108(b), 70 Stat. 378, recodified at 72 Stat. 895; 23 U.S.C. 113 as amended), see particularly the amendments in the Federal-Aid Highway Act of 1963 (Pub. L. 90-495, 82 Stat. 815).

11. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

12. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

13. Rehabilitation Act of 1973 (sec. 306(b)(5), 87 Stat. 384, 29 U.S.C. 776(b)(5)).

14. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 83 Stat. 1645; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 904(b)(3)).

15. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

16. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

17. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

18. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

19. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

20. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

21. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 306(h)(2) thereof, 83 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

22. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

23. Health Professions Education Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2256, 42 U.S.C. 293a(c)(7)).

24. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 394; 42 U.S.C. 290a(b)(5)).

25. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

26. Safe Drinking Water Act (sec. 2(a), see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).

27. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2281, 42 U.S.C. 300o-3(b)(1)(H)).

28. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 697; 42 U.S.C. 1437j).

29. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310, 12 U.S.C. 1715c; 42 U.S.C. 1437j).

30. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

31. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

32. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

33. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

34. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689(a)(5)).

35. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

36. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

37. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

38. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

39. Public Works and Economic Development Act of 1965 (sec. 712, 79 Stat. 575 as amended; 42 U.S.C. 3222).

40. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 538; 42 U.S.C. 3884).

41. New Communities Act of 1968 (sec. 410.82 Stat. 516; 42 U.S.C. 3909).

42. Urban Growth and New Community Development Act of 1970. (sec. 727(f), 84 Stat. 1603; 42 U.S.C. 4529).

43. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

44. Housing and Community Development Act of 1974 (secs. 110, 802(g), 83 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

45. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

46. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

47. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

48. Energy Conservation and Production Act (sec. 45(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

49. Solid Waste Disposal Act (sec. 2, 90 Stat. 2828; 42 U.S.C. 6979).

50. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

51. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

52. Highway speed ground transportation study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

53. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

54. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281(i)).

55. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 40 U.S.C. 682(b)(4)).

Note.—Repealed Dec. 9, 1969 and labor standards incorporated in sec. 1-1431 of the District of Columbia Code.

56. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).

57. Delaware River Basin Compact (sec. 13.1, 75 Stat. 714, Pub. L. 87-328) (considered

a statute for purposes of this part but not in the United States Code).

58. Energy Security Act (Sec. 175(c), Pub. L. 96-294, 94 Stat. 611; 42 U.S.C. 8701 note).

Appendix B

Boston Region

For the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, JFK Federal Building, Government Center, Room 1612C, Boston, Massachusetts 02203 (telephone: 617-223-5565).

New York Region

For the States of New Jersey and New York and for the Canal Zone, Puerto Rico, and the Virgin Islands:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, Room 3300, New York, New York 10036 (telephone: 212-399-5443).

Philadelphia Region

For the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, and the District of Columbia:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Gateway Building, Room 15220, 3535 Market Street, Philadelphia, Pennsylvania 19104 (telephone 215-596-1193).

Atlanta Region

For the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1371 Peachtree Street, N.E., Room 305, Atlanta, Georgia 30309 (telephone: 404-881-4801).

Chicago Region

For the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 230 South Dearborn Street, 8th Floor, Chicago, Illinois 60604 (telephone: 312-353-7249).

Dallas Region

For the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 555 Griffin Square Building, Young and Griffin Streets, Dallas, Texas 75202 (telephone: 214-767-6891).

Kansas City Region

For the States of Iowa, Kansas, Missouri, and Nebraska:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 2000, 911

Walnut Street, Kansas City, Missouri 64106 (telephone: 816-374-5386).

Denver Region

For the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 1440, 1961 Stout Street, Denver, Colorado 80294 (telephone: 304-837-4613).

San Francisco Region

For the States of Arizona, California, Hawaii, and Nevada:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 450 Golden Gate Avenue, Room 10333, San Francisco, California 94102 (telephone: 415-556-3592).

Seattle Region

For the States of Alaska, Idaho, Oregon, and Washington:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 4141, 909 First Avenue, Seattle, Washington 98174 (telephone: 206-442-1916).

Appendix C

Subject: Application Of The Standard Of Comparison "Projects Of A Character Similar" Under The Davis-Bacon And Related Acts

The purpose of this memorandum is to set forth policies of the Wage and Hour Division with regard to the determination of "projects of a character similar to the contract work" for wage determination purposes. The guidelines contained in the memorandum are to be used by the contracting agencies in selecting the proper schedule(s) of wage rates from the Federal Register and in instructing contractors regarding the application of multiple schedules. This memorandum supersedes All Agency Memorandum No. 68 (July 19, 1966), No. 130 (March 17, 1978), and No. 131 (July 14, 1978).

The Davis-Bacon and related Acts require the Secretary of Labor to determine the prevailing wage rates for corresponding classes of laborers and mechanics on projects in the area which are of a "character similar" to the proposed contract work to which the determination will be applied. The Department's Wage Appeals Board in a decision specifically relating to high-rise apartment buildings (WAB Case No. 76-11, dated January 27, 1977) stated:

"The test of whether a project is of a character similar to another project refers to the nature of the project itself in a construction sense, not to whether union or nonunion wages are paid or whether union or nonunion workers are employed. Since the 1935 amendments to the Davis-Bacon Act, the statutory focus has always been on the character of the project itself rather than on who was employed on the project or how much he or she was being paid."

Again, in a decision relating to a water treatment plant project (WAB Case No. 77-

20, dated September 30, 1977), the Board stated: "When it is clear from the nature of the project itself in a construction sense that it is to be categorized as either building, heavy, or highway construction it is not necessary to resort to an area practice survey to determine the appropriate categorization of the project."

Where the proper category of construction is not clear, however, the Board has advised that the wages being paid may be considered to determine the appropriate category of construction, together with other characteristics, such as construction techniques, material and equipment used, and skills called for. WAB Case No. 77-23, dated December 30, 1977.

Generally, construction projects are classified as either Building, Heavy, Highway or Residential.¹ However, separate wage rate schedules are applied where a project includes structures in more than one category and the amount of construction in each category is substantial, either in relation to the overall project (approximately 20 percent or more of total project cost) or in dollar amount (approximately \$250,000 or more). Separate schedules are common, for example, for water and sewage treatment plants, which generally include both buildings and non-building structures. On the other hand, water and sewer lines and paving on building projects are generally only incidental to a project, and therefore separate schedules are not ordinarily issued.²

Below are descriptions of the four major categories of construction, together with an illustrative list of the kinds of projects which are generally included within each category:

Building Construction

Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation

of equipment, both above and below grade level, as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building.

Examples

Alterations and additions to buildings
Apartment buildings (5 stories and above)
Arenas (enclosed)
Auditoriums
Automobile parking garages
Banks and financial buildings
Barracks
Churches
City halls
Civic centers
Commercial buildings
Court houses
Detention facilities
Dormitories
Farm buildings
Fire stations
Hospitals
Hotels
Industrial buildings
Institutional buildings
Libraries
Mausoleums
Motels
Museums
Nursing and convalescent facilities
Office buildings
Out-patient clinics
Passenger and freight terminal buildings
Police stations
Post offices
Power plants
Prefabricated buildings
Remodeling buildings
Renovating buildings
Repairing buildings
Restaurants
Schools
Service stations
Shopping centers
Stores
Subway stations
Theaters
Warehouses
Water and sewage treatment plants (buildings only)

Residential Construction

Residential projects for Davis-Bacon purposes are those involving the construction, alteration, or repair of single family houses or apartment buildings of no more than four (4) stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.

Examples

Town or row houses
Apartment buildings (4 stories or less)
Single family houses
Mobile home developments
Multi-family houses
Married student housing

Heavy Construction

Heavy projects are those projects that are not properly classified as either "building",

"highway", or "residential". Unlike these classifications, heavy construction is not a homogeneous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued. For example, separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

Examples

Antenna towers
Bridges (bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)
Breakwaters
Caissons (other than building or highway)
Canals
Channels
Channel cut-offs
Chemical complexes or facilities (other than buildings)
Cofferdams
Coke ovens
Dams
Dikes
Docks
Drainage projects
Dredging projects
Electrification projects (outdoor)
Flood control projects
Industrial incinerators (other than building)
Irrigation projects
Jetties
Kilns
Land drainage (not incidental to other construction)
Land leveling (not incidental to other construction)
Land reclamation
Levees
Locks, waterways
Oil refineries (other than buildings)
Pipe lines
Ponds
Pumping stations (prefabricated drop-in units)
Railroad construction
Reservoirs
Revetments
Sewage collection and disposal lines
Sewers (sanitary, storm, etc.)
Shoreline maintenance
Ski tows
Storage tanks
Swimming pools (outdoor)
Subways (other than stations and buildings)
Tipples
Tunnels
Unsheltered piers and wharves
Viaducts (other than highway)
Water mains
Waterway construction
Water supply lines (not incidental to building)
Water and sewage treatment plants (other than buildings)
Wells

Highway Construction

Highway projects include the construction, alteration or repair of roads, streets,

¹ For wage determination purposes, a project generally consists of all construction necessary to complete a facility regardless of the number of contracts involved, so long as all contracts awarded are closely related in purpose, time and place. For example, demolition or site work preparatory to building construction is considered a part of the building project for wage determination purposes. In contrast, because of the extensive size of a rapid rail system or a highway, which is built over a period of years, each segment is considered a separate project. See *MARTA*, WAB Case No. 75-5, dated October 16, 1975. Similarly, a rest area on a highway is considered a separate project.

² In certain areas of the country different wage rates are paid for incidental paving and utilities than for the remainder of a building project. Accordingly, in such areas the Wage and Hour Division issues the rates which are paid on such work on building projects. See WAB Case No. 77-19, dated December 30, 1977.

highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

Examples

- Alleys
- Base courses
- Bituminous treatments
- Bridle paths
- Concrete pavement
- Curbs
- Excavation and embankment (for road construction)
- Fencing (highway)
- Grade crossing elimination (overpasses or underpasses)
- Guard rails on highway
- Highway signs
- Highway bridges (overpasses; underpasses; grade separation)
- Medians
- Parking lots
- Parkways
- Resurfacing streets and highways
- Roadbeds
- Roadways
- Runways
- Shoulders
- Stabilizing courses
- Storm sewers incidental to road construction
- Street Paving
- Surface courses
- Taxiways
- Trails

Unless the Wage and Hour Division advises otherwise, as set forth below, the descriptions and classifications above are to be utilized by contracting agencies in selecting the appropriate wage schedule from the Federal Register and in determining the application of multiple schedules issued by the Wage and Hour Division. The advertised and contract specifications should identify as specifically as possible the structures to which the schedule applies and only the appropriate schedule(s) from the Federal Register should be incorporated into the specifications. Where multiple schedules are issued for a project by the Wage and Hour Division, they are to be utilized in the specifications and any applicable instructions regarding their use are to be observed.

To ensure that appropriate schedules are issued by the Wage and Hour Division, contracting agencies are reminded of their responsibility to provide a sufficiently detailed description of the project to enable the Wage and Hour Division to determine the character of the project. If structures in more than one category of construction are involved, such structures should be identified, together with an estimate of the cost of those structures in dollar amounts and in relation to total project cost.

Furthermore, contracting agencies have the authority only in the first instance to designate the appropriate

wage schedule(s) from the Federal Register and, in the absence of instructions from the Wage and Hour Division, to determine the application of multiple schedules issued by the Wage and Hour Division in project wage determinations. It is recognized that in individual cases or with respect to specific areas of the country, application of these guidelines may not be appropriate, such as where the category of construction is not clear and a definitive area practice has developed. For example, major bridges are ordinarily heavy construction, but have attributes of both heavy and highway construction; accordingly, area practice may be of great significance. Similarly, pumping stations vary greatly in sophistication and construction techniques, requiring close examination.

In any instance where a contracting agency has a question regarding application of the guidelines to a specific case, or where a question is raised by interested parties concerning the appropriate schedule(s) to be applied to a contract, the question is to be referred to the Wage and Hour Division. This referral should include a complete description of the project, any evidence available regarding area practice of wages paid on similar projects, comments by interested parties which may have been submitted to the agency, and the agency's own view.

Agencies are advised that the U.S. Court of Appeals for the Fifth Circuit has ruled that where a party has objected to a Federal agency's application of a general wage determination to a project, the question must be submitted to the Department of Labor pursuant to the regulations, 29 CFR 5.13, and bid opening cannot proceed until the dispute is resolved by the Secretary. *North Georgia Building and Construction Trades, supra*. The Wage and Hour Division will endeavor to cooperate with the contracting agencies in acting expeditiously with a view towards procurement deadlines.

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